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Contact Information

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What to Expect in Your LEARN Sessions

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LEARN sessions supplement your real estate program. Every LEARN session will **BOOST** the knowledge you need to pass your exam.

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Agency

- Agency is a topic where you may find significant differences between what you must learn for the national exam versus what you must learn for your state exam.
- National agency concepts are based upon common law.
- Your state agency rules are based upon state legislation or your licensing agency's rules.
- It is best to practice real estate based on the latter, but you will be tested on both.

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Agency

- The brokerage firm hires sales associates, who may be licensed as salespersons or brokers, to help the firm represent its clients.
- Depending on state laws, licensees hired by brokerage firms are referred to as salespersons, sales agents, broker associates, limited brokers, associate brokers, sales associates, or other terms. The brokerage firm hires sales associates, who may be licensed as salespersons or brokers, to help the firm represent its clients.

5

Role of the brokerage firm

- The brokerage firm owns all contracts.
- The employing broker (Responsible Broker, Broker of Record, Brokerage Firm) is responsible for the following:
 - All contracts, listings (employment), and purchase agreements
 - Supervision of all salespersons and broker associates

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Role of the salesperson/broker associate

- Hired to represent the broker and brokerage firm.
- Owes duties to the client equivalent to the duties owed by the broker.
- Can be an employee or independent contractor, depending on your state.
- If an employee, then the brokerage must withhold taxes but does not have to guarantee vacations, set schedules, or set work hours.

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Role of the salesperson/broker associate

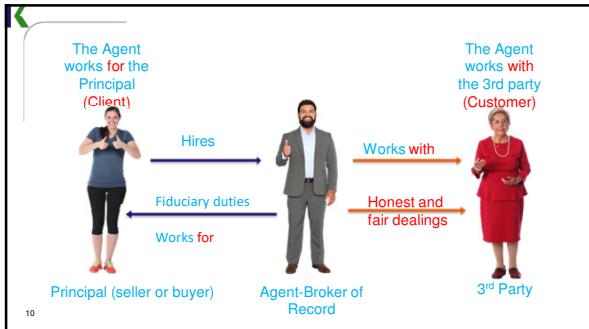
- Independent contractors (hired by the firm) must have a signed independent contractor agreement that states they may set their work hours and must pay their taxes.
- The classification of a real estate agent as an employee or an independent contractor is frequently affected by state laws.

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Parties to an agency relationship

- A principal employs an agent to act on the principal's behalf.
- **Principal/client:** a principal employs an agent to act on the principal's behalf; the principal may or may not be the person who pays the agent.
- **Agent/fiduciary:** one who is employed to represent a principal.
- **Third party/customer:** a party to a transaction who is not a party to the particular agency agreement; consumer third party is a "customer" and may not be represented by any broker.

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Creation of agency

- The agency is determined by who employs the agent, not who pays the agent.
- An express agreement is created by a direct statement.
- May be **oral or written**.
- Only written commission agreements are enforceable.
- Implied agency is created through an agent's actions.

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Scope of an agent's authority

- A special agency** is created when an agent is authorized to perform a particular act without the ability to bind, commit to a contract, the principal (in an advisory capacity only).
 - Listing brokerage firm to seller
 - Buyer brokerage firm to buyer
- A general agency** is created when an agent is authorized to perform a series of acts associated with the continued operation of a particular business. The agent has a limited ability to bind the principal.
 - Property manager to the property owner.
 - Salesperson and broker associates are general agents of a broker.

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Scope of an agent's authority

- A **universal agency** is created when the principal gives the agent control over all of the principal's affairs and has unlimited ability to bind. Appointment of a universal agent is often part of an end-of-life plan.

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Question

A neighbor tells her neighbor Sue, that she wants to sell her home. Sue, who is a salesperson, finds a buyer and calls the neighbor to tell her she has found someone to buy her home. At this point Sue

- A. is an implied agent for the neighbor.
- B. is an express agent for both parties.
- C. has no brokerage relationship with either party.
- D. is a general agent for the neighbor.

14

Answer

- A. is an implied agent for the neighbor.

Sue has acted upon the neighbor's statement, which makes her an implied agent for the neighbor. Depending on what Sue told the potential buyer, she may have an express, oral, or written, agreement with the buyer.

15

Types of Listing agreements- A contract between a seller and the agent

• Exclusive right to sell

- The brokerage gets paid if the property sells, regardless of who finds the buyer. Only one listing agent is allowed under this contract. It is a bilateral agreement.

• Exclusive agency

- The brokerage gets paid if the property sells, unless the seller finds the buyer. Only one listing agent is allowed under this contract.
- It is a bilateral agreement.

• Open/nonexclusive

- The brokerage only gets paid if the broker procures the buyer. Multiple open listings may be given, but only the procuring cause is paid.
- It is a unilateral agreement.

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Listing agreement

• Net listing

- A net listing is legal in some states and not recommended in others. It has extreme liability and ethical issues. In a net listing, the owner sets an amount that they would like to receive from the sale of the home, and the broker receives anything that exceeds that amount as their commission.

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Listing agreement

- An employment contract that appoints a brokerage firm as an owner's special agent for the specific purpose of finding a buyer who is ready, willing, and able to buy according to the terms of the contract.

• Parties:

- Seller = **principal/client**
- **Brokerage firm** = agent/fiduciary

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Listing agreement

- Amount and/or method of compensation
 - Flat fee
 - Percentage of sales price
 - Hourly rate

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Listing agreement

- **Multiple-listing clause**
- Material on the MLS is in the process of becoming outdated. It was defined as "A offer of cooperation to other member brokers"
- Due to a class action lawsuit NAR is looking at how they can still be viable in the current real estate environment. There is on going litigation that will change the face of how we do business in the future with regard to commission fees.
 - All of this is in the process of changing based upon recent lawsuit settlements

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WHEN DOES THE LISTING BROKER GET PAID

Unsure if this will be tested

| Type of listing | Owner obtains buyer | Co-op agency obtains buyer | Listing agency obtains buyer | Someone else obtains buyer |
|-------------------------|---------------------|----------------------------|------------------------------|----------------------------|
| Exclusive right-to-sell | \$ | \$ | \$ | \$ |
| Exclusive agency | | \$ | \$ | \$ |
| Open | | | \$ | |

 Question

An agent working for a principal has been given limited power to bind the principal. The agent is most likely

- A. a universal agent.
- B. a general agent.
- C. a special agent.
- D. an exclusive agent.

22

 Answer

B. a general agent.

- A general agent, such as a property manager, has **limited power to bind** the principal.
- A special agent has **no power to bind** the principal.
- A universal agent has **unlimited power to bind** the principal.

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 Buyer representation agreement

- Parties
 - Buyer is the principal
 - **Brokerage firm** is agent/fiduciary
- Can be an exclusive right to buy, an exclusive agency agreement, or open agency
- These agreements have been the norm in commercial transactions and are likely to become the norm in residential transactions.

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Property management agreement

- A property management agreement is a contract between the owner of an income-producing property and a brokerage firm that will act as the property manager.
- The parties to the agreement are the following:
 - Property owner: principal
 - Property manager (**Brokerage firm**): general agent

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Tenant representation agreement

- Parties
 - Tenant is the principal
 - **Brokerage firm** is agent/fiduciary
- Can be an exclusive right or an exclusive agency agreement

26

Power of Attorney

- A Power of Attorney can create an agency relationship in which the agent is referred to as an **Attorney-in-Fact**. These are usually created to allow the Attorney in Fact to sign documents for the Principal, hence they are usually general agencies or universal agencies.

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Termination of an Agency

- Full performance, closing, or expiration of the agreement
- Death or bankruptcy of principal or brokerage firm (not salesperson or broker associate)
- Destruction of improvements
- Mutual rescission
- Breach by either party may terminate the agreement, but there may be liability issues

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Fiduciary Duties

- O = Obedience
L = Loyalty
D = Disclosure
C = Confidentiality
A = Accounting
R = Reasonable skill and care

C
O
L
D
A
C

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Obedience

- An agent must obey the lawful directions of the principal.
- If a principal asks the agent to do something unlawful (e.g., intentionally failing to disclose a problem with the property or refusing to show the property to a member of a protected class), then the agent should decline the listing.

30

Loyalty

- An agent must place the interest of the principal above all others. An agent is obligated to show a buyer all properties that meet the buyer's requirements, not just those with the highest commissions.
- An agent owes good faith and honesty to the principal

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Disclosure

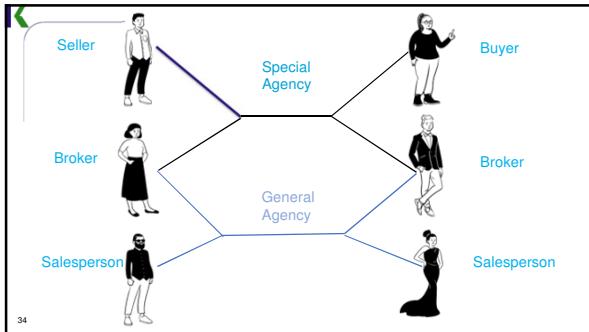
- An agent must disclose to the principal and all parties all known material facts about the property. An agent must disclose to the principal **all** knowledge about the transaction (including, but not limited to, material facts).
- The listing agent must share with the seller concerns about the buyer's ability to qualify for a loan.
- The buyer's agent should share with the buyer concerns about the property's condition and recommend an expert evaluation.
- An agent must disclose to the principal the benefits of the transaction, as well as the risks or defects.

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Confidentiality, Accounting, Care

- **Confidentiality**
 - An agent must keep the principal's confidential information private.
 - The agent must frequently keep price, terms, and motivation (PTM) confidential.
 - An agent may release confidential information with permission from the principal.
 - Termination of the agency does not end the confidentiality owed.
- **Accounting**
 - Agents must account for any money or personal property entrusted to them.
- **Reasonable skill and care**
 - Must reach that of a licensed real estate professional.

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Question

A real estate agent working with a customer owes them which duties of care?

A. Obedience, reasonable care, disclosure
B. Loyalty, obedience, confidentiality
C. Confidentiality, reasonable care, disclosure
D. None of the above

35

Answer

D. None of the above

- Working with a **customer** means that there is no agency relationship yet established. The duties owed to a customer do not include confidentiality, loyalty, or obedience.

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Single agency/dual agency

- A **single agent** represents only one party to a transaction.
 - Once an offer has been accepted, the buyer's broker may be referred to as the "**selling broker**."
- **Dual agency** occurs when a broker represents more than one party to a transaction. It typically requires disclosure and the written consent of both parties. Rules regarding dual agency are state-specific, even as to whether it is legally allowed.

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Agency disclosures

- Mandatory agency disclosure laws exist in all states.
- There may be specific disclosure forms that the real estate agent is required to use.
- States will require agents to disclose when possible conflicts of interest may exist. These are likely to exist when a licensee has both an agency interest and a financial or ownership interest in the property.

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Question

A dual agent in a purchase agreement

- A. represents its broker and the seller.
- B. represents its broker and the buyer.
- C. represents both the buyer and the seller.
- D. is illegal nationally.

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Answer

C. represents both the buyer and the seller.

- A dual agent represents both parties in a transaction. The broker is not a party to the purchase agreement.
- The legality of dual agency representation is regulated by each state, not nationally.

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The Appraiser's Work

- The professional real estate appraiser provides an opinion of the value of an interest in real property (land and/or buildings). Value may be sought for any number of reasons.
- The appraiser must provide a well founded, unbiased opinion of value.**
- As of July 1, 1991 (later extended to January 1, 1993), all federally related real estate appraisals must be performed by a licensed or certified appraiser in the state in which the property is located.

45

Appraisal process

- This is a systematic analysis of the factors that bear on the value of real estate; an orderly program by which the problem is defined; **the work necessary to solve the problem is planned**; the data involved are acquired, classified, analyzed, and interpreted into an opinion of value; and the final opinion of value is presented in the form requested by the client.

46

USPAP

- Uniform Standards of Professional Appraisal Practice (USPAP) was adopted by Congress in 1989, and contains standards for all types of appraisal services, including real estate, personal property, business, and mass appraisal.
- Compliance with USPAP is required for state-licensed and state-certified appraisers involved in federally-related real estate transactions.

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Appraiser licensing

- Each state establishes the requirements for licensing, which may be more stringent than the Federal requirements.
- In 1989, Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act was enacted by Congress mandating all states to license real estate appraisers who appraise real property in federally-related transactions.

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Appraiser licensing

- **Appraiser Trainee:** Must have a supervising certified appraiser to review all reports.
- **Licensed Appraiser:** May appraise noncomplex 1-4 residential units having a value of less than 1 million and complex properties of 1-4 units having a transaction value of less than \$400,000.

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Appraiser licensing

- **Certified Residential Real Property Appraiser:** May appraise 1-4 residential properties without regard to value or complexity and vacant or unimproved land.
- **Certified General Real Estate Appraiser:** May appraise all types of property.

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Computer-assisted mass appraisal

- As time goes on, more and more appraisal activities have come to rely on computerized research and databases. An example is the technique, known as CAMA, is useful when thousands of properties are reassessed for property tax purposes.
- The more complex the property, however, the more training and skill of the appraiser becomes a vital part of the process.

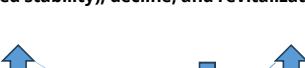
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APPRAISAL = DEFENDABLE OPINION

| PAST | PRESENT | FUTURE |
|-------------|---------|------------------|
| 5 Years Ago | Today | 2 Years From Now |

Stages of life cycle

- Just as with individual properties, a typical neighborhood goes through four distinct periods in its life: **growth, equilibrium (also called stability), decline, and revitalization.**



The diagram consists of four blue arrows arranged in a loop. The first arrow points upwards from the bottom left. The second arrow points horizontally to the right. The third arrow points downwards from the top right. The fourth arrow points upwards from the bottom right, completing the cycle. This visual representation corresponds to the four stages of a neighborhood's life cycle: growth, equilibrium, decline, and revitalization.



Basic principles of value

- There are a number of economic principles that can affect the value of real estate. The most important are defined here:
- **Anticipation:** Value is created by the expectation that certain events will occur. (Income approach is based on this principle.)

Basic principles of value

- **Change:** No physical or economic condition remains constant.
- **Competition:** The interaction of supply and demand. Profitable businesses tend to attract competition.
- **Conformity:** Maximum value is created when a property is in harmony with its surroundings.

55

Basic principles of value

- **Contribution:** The value of any part of a property is measured by its effect on the value of the whole (additional bedroom)
- **Plottage:** Consolidation of adjacent lots into a single larger parcel may produce a greater total land value than the sum of the two sites valued separately.
 - The process is called **assemblage** and the increase in value (if any) is called **plottage**.

56

Basic principles of value

- **Regression:** The value of a better-quality property is adversely affected by the greater presence of smaller properties in the same area or size.
- **Progression:** Conversely, the value of a lesser-quality property is enhanced when located in a higher-quality neighborhood.
- **Substitution:** Used in all appraisal methods. The value of anything is established by the cost to acquire an equally desirable substitute.

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Regression

- Regression
An *over-improved* property *declining* in value is the principle of *regression*.

Example: A large house on a property in a neighborhood of smaller or less expensive properties.

58

Progression

- Progression

In contrast, an *under-improved* property that *increases* in value is the principle of *progression*:

Example: A small house in a neighborhood of larger houses and more expensive properties.

59

Effective vs actual age

- Effective Age:** The apparent age of the building based on observed condition rather than chronological age.
- Chronological Age:** The actual age of the building.

60

CMA/BPO/broker opinion of value

- A real estate licensee's job is to perform a CMA, not an appraisal.
- The licensee researches and evaluates properties that have recently sold.
- It is similar to the sales comparison approach (which will be covered later).



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Market value

- The most (in terms of cash or its equivalent) that a property should bring when:
 - The most **probable price** (in terms of cash or its equivalent) that a property should bring when:
 - A willing seller would sell and a willing buyer would buy.
 - The property is exposed on the open market for a reasonable time.
 - Both parties are familiar with the property's uses, defects, and advantages.
 - Neither party is under abnormal pressure to sell or buy.

62

Market price

- The **actual sales price**, which may be higher or lower than market value depending on the market conditions. Market price is a historical fact, because it was the purchase price of the property at one point in time.



63

Question

The most probable price a property will bring at sale is the

- A. market price
- B. assessed value
- C. market value
- D. ad valorem price

64

Answer

C. market value

- Market value is the appraised amount. Market price is the sold or closed price of the property. Assessed and ad valorem values are used by the tax assessor, not brokers.

65

Supply and demand

- Seller's market versus buyer's market
- Supply: number of available properties (of a certain type in a certain area)
 - Price moves opposite of supply; when supply goes up, the price goes down
- Demand: number of properties that will be purchased
 - Price moves with demand; when demand goes up, the price goes up
- Determines sale prices and rental rates

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Essential elements of value — **DUST**

Demand
Utility
Scarcity
Transferability



67

Question

During a recent recession, property values went down and building stopped. In Anytown, the rents and sales prices have now increased rapidly in the last year. The best appraisal principle to explain what is occurring would be

A. contribution
B. progression
C. supply and demand
D. highest and best use

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Answer

C. supply and demand

- **Supply and demand** states if the demand goes up, so will the price. Additionally, if supply is down, price goes up.
- **Contribution** is used to determine value of improvements.
- **Progression** is part of the principle of conformity.
- **Highest and best use** is used to determine if the current use is the highest value.

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Example of highest and best use



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Highest and best use

- The highest and best use is the use that produces the greatest return on investment over time. It typically is the current use, but it could be different, especially if the zoning has changed. It must be legally permissible, physically possible, economically feasible, and the most productive use.
- The appraiser must show the **current highest and best** use in the appraisal. This is **not** used in a broker opinion of value.

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Sales comparison/market data approach

- This is usually the most important method for residential property and vacant land.**
- The value estimate is based on adjusted sale prices of similar, recently-sold properties.
- It is similar to what brokers use to determine value when **performing a comparative market analysis**.
- Square footage is typically based on the exterior dimensions of the finished, heated living area.
- Local, state, or multiple listing service (MLS) guidelines often determine square footage.

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Sales comparison approach

- Primary elements of comparison and adjustment are
 - Lot size
 - Date of sale (values may be appreciating or depreciating)
 - Market cycles often create the need for a "time of sale" adjustment
 - Days on market
 - Amenities
 - Exterior dimensions of improvements (square footage)
- Adjustments are made to the comps.
- Adjust the sales price of the comparable to make it similar to the subject property.

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Sales comparison approach

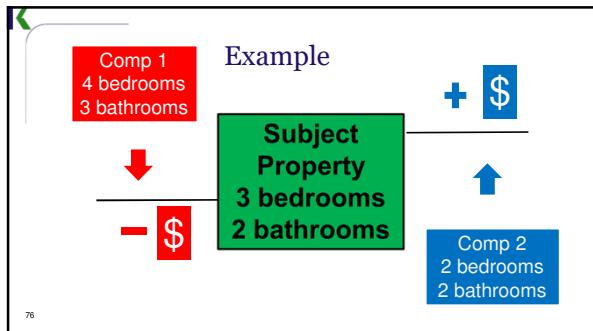
- If comp is better than subject, **subtract**
 - Example: The subject property has one bathroom and the comparable has two, so subtract the value of the extra bathroom from the comp's sale price to make it match the subject property.
- If comp is worse than the subject, **add**
 - Example: The subject property has three bedrooms and the comp only has two, so add the value of the missing bedroom to the comp's sales price to make it match the subject property.

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Sales comparison-market approach

- Property evaluating – "subject"
- Similar properties recently sold – "comparable"
- Adjustments made to comparable
- Comp better "-", comp worse "+"

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Question

When appraising a single-family home, you make adjustments to

A. the comparable properties
B. the subject
C. neither
D. both

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Answer

A. the comparable properties

- You only adjust the comparable properties.

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Cost approach



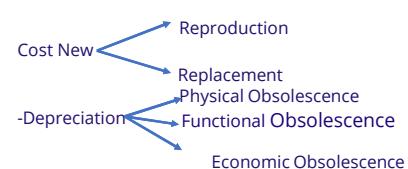
79

Cost approach

- This is the most important method for new construction and unique or special-purpose properties, such as churches and schools.
- The cost approach is typically used when comparable sales or income is lacking.
- Three steps in the cost approach**
 - Estimate the cost to build the improvements if built now. This is based on the reproduction or the replacement cost.
 - Estimate and deduct accrued depreciation in the subject property.
 - Add the value of the land.

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Cost approach



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Cost approach

- Cost to build new (uses only one of these methods)
- Reproduction cost new
 - Cost to build a **replica** with the same or highly similar material
 - Used for historic properties
- Replacement cost new
 - Cost to **replace** improvements with the same functionality/utility

82

Cost approach

- Depreciation is a **loss of value** for any reason.
 - Depreciation affects improvements, not land.
- **Physical deterioration** (also called obsolescence)
 - Deferred maintenance
 - Wear and tear
- **Functional obsolescence**
 - Design or other inadequacies, including obsolete equipment, poor floor plan, etc.
 - Examples: outdated lighting and plumbing fixtures or a four bedroom home with one bathroom

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Cost approach

- **Economic obsolescence** (also called locational obsolescence or external obsolescence)
 - External factors, location, surroundings - determined through a neighborhood analysis
 - Example: Property is in a rundown neighborhood. This originates **outside the property boundaries**



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Income approach

- The income approach is used for properties that **generate income**, such as an apartment building, shopping center, or residential rental property.
- Real estate investors buy properties for the income the property produces.
- Investors determine what they will pay based on a rate of return or **capitalization rate**.
- The capitalization rate (or cap rate) for a property type in a given area can be determined by using past sales. This allows the appraiser to estimate the present value of a property that has not yet closed.

85

Income approach

- Capitalization:** This is the process of converting estimated future income into **present value**.
- Calculation of future income is based on a property's annual Net Operating Income (NOI)
- Cash flow = I (net operating income) minus debt service

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Finding the Net Operating Income

Potential gross income (**PGI**)
a) Contract rent
b) Market rent
– Vacancy and collection losses (percent of potential gross)
Effective gross income (**EGI**)
– Operating expenses
(do not include debt service)
Net operating income (NOI)
– Debt service
Cash Flow

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Income approach

- Can be used for any property that generates income.
- Appraiser determines
- Net Operating Income (NOI)
- Rate is the capitalization rate or rate of return the investor wants.
- Value
- You should be able to do this formula in all its derivations
 $R \times V = I$
 $I \div V = R$
 $I \div R = V$



88

Question

When capitalization rates go up and the income stays the same, the value of the property

A. goes up
B. goes down
C. stays the same
D. none of the above

89

Answer

B. goes down.
When capitalization rates go up and the income remains the same, the value goes down. Capitalization rates equal risk.

| | 12% | \$10,000 | \$83,333 | |
|---|-----|----------|-----------|---|
| ↑ | 10% | \$10,000 | \$100,000 | ↓ |
| ↓ | 8% | \$10,000 | \$125,000 | ↑ |

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Gross Rent Multiplier

- **GRM:** If a buyer is interested in purchasing a 1-4 residential rental property, the gross rent multiplier could be used for a rough approximation of value. To establish an accurate multiplier, you need 4-5 recent sales and rental data.

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Gross Rent Multiplier

- The formula is:
- Sales Price divided by monthly/annual gross rent = GRM
- Once you have a multiplier, you multiply this number by the monthly or annual rent of the subject.

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Gross Rent Multiplier

- If a house recently sold for \$155,000 and its monthly rental income was \$1,250, the GRM for the property would be:
 - \$155,000 divided by \$1,250 = 124 GRM
- If you have a property that has a \$1,500 monthly income, you would multiply this by the GRM of 124 = \$186,000
- * Be very careful regarding exam questions. Are they giving you annual income or monthly income? Do they want a GMM or a GAM.

93

Reconciliation

- During the final phase of the appraisal, the appraiser reconciles (correlates) the three approaches to value (sales comparison/market data, cost, and income).
- Each approach is weighed and used to determine a subject's estimated value. It is not an average.
- The appraiser considers all three approaches but gives the most weight to the approach that is the most appropriate for the property type.

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Reconciliation

- For a single-family property, the appraiser would usually give the most weight to the sales comparison approach.
- For a unique property like a school or a historic church, the appraiser would usually give the most weight to the cost approach.
- For an income-producing property like an office building or shopping center, the appraiser would usually give the most weight to the income approach.

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General principles of contract law

- A contract is a promise or a set of promises.
- The law recognizes these promises as a legal duty: A breach of one or more promises typically has a legal remedy.
- A valid contract is one where **ALL** the legal elements of a contract are present.

100

Enforceability of contracts



101

The courtroom doors can be opened for your claim.

Enforceability of contracts

- The validity of a contract and the enforceability of a contract are two very different things:
 - **Validity** has to do with the elements of Co-Ca-Co-La.
 - **Enforceability** allows a party to take a contract to court and sue. To do so, you must follow these two statutes:
 - **Statute of Frauds:** Certain contracts must be **written** to be enforceable in a court of law.
 - **Statute of Limitations:** There is a time limit in which to act.

102

Statute of Frauds

Certain contracts must be in writing to be enforceable in court.



103

Statute of Frauds

- State law that requires certain contracts to be in writing.
- These contracts must be signed by the party to be charged to the agreement (that means signed by the person who will be sued in the lawsuit) in order to be legally enforceable.
- Statutes generally require that all contracts for the sale of land and a transfer of any interest in land to be in writing.
- Exception: An oral lease for a lease lasting **one year or less** is enforceable in a court of law.

104

Example of an unenforceable contract

- June Lee agrees to sell her home to Paul Hernandez. They agree with a handshake. June changes her mind and refuses to sell her home to Paul. This is an unenforceable contract. All sales contracts to transfer real property need to be in writing, per the Statute of Frauds.

105

Question

An example of an enforceable oral contract is a

- A. lease for 6 months.
- B. lease for 13 months.
- C. listing contract for 6 months.
- D. purchase agreement for an unimproved lot.

106

Answer

- A. lease for 6 months.

Lease for 6 months. Leases for one year or less are enforceable even if made orally. This does not mean that they should be made orally.

107

Statute of Limitations

108

Statute of Limitations

- The “Law of Limitations” prescribes the time limit for filing certain lawsuits. It is only within the allotted timeframe that an aggrieved person can approach the court for redress or justice.
- If you do not begin action within the prescribed period, you will essentially be locked out of court.
- Each state establishes their own Statute of Limitations.

109

Doctrine of laches

- The doctrine of laches can also prohibit someone from proceeding with a lawsuit
- This is an equitable doctrine, meaning it is a judicial remedy imposed by a judge. If the judge feels the timing of the lawsuit is grossly unfair to the party being sued, the judge will stop the lawsuit, even if it is within the timeframe allowed by the Statute of Frauds.

110

Four essential elements of a valid contract

Consent relates to there being an offer, acceptance, and communication back to the offeror.

Capacity relates to the age and mental capacity of the parties to contract.

Consideration relates to the value aspect of a contract. Legal value: The “value” that is given by the parties. Words associated with this include *adequate, valuable, good, sufficient*.

Lawful objective relates to whether the purpose (subject matter) of a contract is legal.

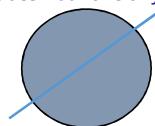
111

Memory Aid:

Co Ca Co La

Void contract

A VOID contract has any **one** element missing.
One element is not more important than another.
If one is missing the contract is looked at as empty or lacking, so it does not have any legal standing.



112

Voidable contract

- A **Voidable** contract is **valid** until the injured party decides how to proceed. Because it was created under one of the following conditions noted below, the injured party has a **unilateral right to exit or accept the contract**.
- Acceptance of the contract does not insulate the perpetrator from a legal claim against them.
- This is a contract created using fraud, misrepresentation, duress, menace, or undue influence to get someone to agree to the contract.

113

Express/implied contracts

- An express contract is a **verbal or written** agreement between two or more parties: All of the contractual terms in an express contract are explicitly expressed in advance.
- An implied contract, by contrast, is neither written nor oral, but is based on the behavior of the parties involved: an implied contract is legally binding.

114

Bilateral/unilateral

- **Bilateral contract:** A contract where each party promises to perform an act.
 - Examples: Exclusive Listing Agreements, Purchase Contracts, Leases
- **Unilateral contract:** A promise in exchange for an act.
 - Examples: Open Listing, Option Agreement

115

Offer



116

Offer

- Consent, sometimes called a "meeting of the minds," is reached when there is an offer, acceptance, and a communication of acceptance.
- An offer shows an intention to enter into a contract. It is made by the **offeror**.
- An offer creates the power of acceptance in the offeree. The **offeree** receives the offer.
- All offers for an interest in real estate should be written. Any change in the offer, regardless of how small, terminates the offer and creates a counteroffer.

117

Acceptance



118

Acceptance

- The second component of the “meeting of the minds,” needed to reach a binding contract is acceptance.
- The offer must be accepted by the offeree. The acceptance must be definite, unambiguous, and unqualified.

119

Communication of acceptance



120

Communication of acceptance

- An offer can be revoked anytime prior to communication by the offeree back to the offeror that the contract has been accepted.

121

Question

All of the following are required for a valid contract EXCEPT

- A. mutual agreement.
- B. competent parties.
- C. earnest money.
- D. consideration.

122

Answer

C. earnest money.

- An earnest money deposit is a buyer's deposit. Sometimes called a good-faith deposit.
- Earnest money is not consideration for a sales contract and therefore is not required.
- Earnest money is usually the amount of liquidated damages, if the liquidated damages clause is in effect.

123

Question

All of the following would make a contract voidable EXCEPT

- A. fraudulent information was given to the buyer regarding the property in question.
- B. the seller told the buyer the house has no environmental issues, when in fact it does.
- C. the buyers cannot decide how to take title.
- D. the buyers are told that they will be dropped off in the middle of nowhere unless they sign the contract.

124

Answer

C. the buyers cannot decide how to take title.

Voidable contracts are created when one party is bound by the terms of the contract but the other party is *not bound*. (*because one party is a minor, or because of fraud, duress, or misrepresentation*).

125

Option agreement

- An option agreement is where the seller agrees, in writing, to sell at an established price for an established period of time. This is a unilateral contract, since only the seller is making an enforceable promise. The buyer pays an option fee, which the seller retains. The buyer may or may not ACT. Their decision not to purchase will cost them the option fee, but they have not breached the contract. This is frequently used by a developer to allow them time to obtain the entitlements to development and ensure that there continues to be a viable market.

126

Electronic signatures

- The simple electronic signature is the fastest and easiest to use, however when signing more important documents, you will be required to use a digital signature, which is a more secure and technologically advanced method of signing online documents.
- Not every document can be signed electronically. Some examples are deeds and wills.

127

Purchase contract

- A buyer agrees to purchase for a certain price and the seller agrees to convey title by way of a deed. In addition to binding the parties to the purchase and sale of the property during the period of time required to close the transaction, the contract frequently serves as the initial direction to the closing agent or escrow company to process the mechanics of the transaction. **We MUST have offer, acceptance, and communication of the acceptance to the offeror to have a complete contract.**

128

Rights and obligations to a contract

- A contract is a legally enforceable agreement between parties who agree to perform or refrain from performing certain acts for consideration. In simple terms, it is an enforceable promise.
- Violation of any of the terms or conditions of a contract without legal excuse will allow remedies including the following: rescission of the contract, action for money damages, or an action for specific performance.

129

Remedies for breach of contract

- **Rescission:** The legal remedy of canceling, terminating, or annulling a contract and restoring the parties to their original position; a return of status quo.
- **Monetary damages:** If it is a case where a buyer has backed out of a purchase contract, the money damages could be the difference between the contract purchase price and the value of the property. This will be determined by a judicial process.

130

Compensatory damages/actual damages

- This is to compensate someone for the actual damages or loss suffered. In a contracts lawsuit, these damages are in dollars.

131

Liquidated damages

- These are damages, typically agreed to in advance, in order to compensate the seller when the buyer walks away from the transaction without a valid reason.

132

Punitive/exemplary damages

- This is intended to punish the person who breached the contract and may be awarded to make an example of this person so that other people do not engage in the same bad behavior.

133

Remedies for breach of contract

- Specific performance:** An action brought in a court of equity in special cases to compel a party to carry out the terms of the contract. The basis of this suit is that land is unique and mere legal damages would not adequately compensate the buyer for the breach.
- It is more difficult to get a specific performance judgment against a buyer than a seller. The judge can order a seller to sign a deed to transfer property, however if the buyer does not have the funds to complete the contract, this would not be a beneficial remedy.

134

Termination of a contract

- The important thing to remember is that the contract of sale is of primary importance to the real estate transaction. If you follow the terms of the contract and act within time limits, you may exercise the termination rights that the contract contains. If you fail to follow the terms, most contracts state that you have waived the right to terminate.

135

Termination of a contract

- After you have given the seller notice of termination, two closely related steps must follow: 1) the parties must formally terminate the contract, and 2) the earnest money deposit must be released to the buyer.
- If the buyer and seller agree to the termination, their agreement is usually formalized by signing a termination form.

136

Termination of a contract

- If the buyer and seller cannot agree that the contract is terminated, the matter could lead to prolonged negotiation and (possibly) litigation

137

Addenda and amendments to a contract

- **Addenda/Addendum:** Additional material attached to and made part of a document. This is supplementary information without changing the original contract.
- **Amendment:** Alters the core terms of the contract. The most common reason for amending a contract is due to unforeseen conditions. For example, if a natural disaster damaged the property, both parties would need to agree on how they will proceed.

138

Contract contingencies

- A provision in a contract that requires the completion of a certain act or happening before the contract is binding. In simple terms, it is an “**if**” in the contract.
- Some examples of common contingencies would be, “I will buy your property if I can sell my home first” or “...if I can qualify for a loan.” Failure to do so, is NOT a breach of contract if you acted in good faith.
- Time frames need to be established to meet the contingency. The lack of meeting a contingency is not considered a breach of contract.

139

Question

A buyer who terminates a contract due to the failure of a contingency

- A. is in breach and will forfeit the deposit.
- B. is not in breach and will not forfeit the deposit.
- C. has no impact on the contract.
- D. is in breach and will not forfeit the deposit.

140

Answer

B. is not in breach and will not forfeit the deposit.

A buyer who terminates a purchase contract per a contingency is NOT in breach and will have any earnest money returned.

141

Counteroffers

- When an offeror (buyer) makes an offer on a given property, the seller (offeree) can respond in one of three ways.
- Acceptance:** No changes (unqualified)
- Rejection:** Offer is dead
- Counteroffer:** The parties change places: the offeree now becomes the offeror and the offeror becomes the offeree.

142

Proper handling of multiple offers

- Multiple offers of a purchase contract must be presented in a timely fashion. It is part of the agent's fiduciary duty to discuss the pros and cons of each offer. The agent must follow this fiduciary duty even if it results in less compensation as a result of the seller accepting a particular offer.

143

Lease contract

- An agreement, written or unwritten, transferring the right of exclusive possession and use of the real estate for a definite period of time. The lessor (owner) grants the right of possession to the lessee (tenant) but retains a reversionary right.
- Statute of Frauds: A lease for a period **of one year or less** need not be in writing to be enforceable.

144

Terms in a lease

- **Quiet Possession:** Lessee is the only party given the legal right to possess the property. With a reversionary right at the end of the lease to the lessor (owner).
- **Quiet enjoyment:** The right of a lessee, legally in possession of real estate, to uninterrupted use of the property without interference from the owner, or any third party claiming superior title.
- **Habitable:** Property that is fit for human occupancy and is free of serious defects that might pose a risk to health and safety.

145

Lease contract

The lessor (owner) makes three promises and then lessee makes three promises, whether the contract is written or not.

Lessor

Quiet Possession
Quiet enjoyment
Habitable conditions

Lessee

Pay rent
Use lawfully
Will not damage the property

146

Lease-option contracts

- An agreement in which part of the rent payment is applicable toward a set purchase price. Title is transferred from lessor to lessee when the lessor receives the prearranged total price.
- The lessee may convert the lease-option into a purchase contract.

147

Types of leases

- **Net lease:** The most common form of commercial lease agreement. With a net lease, the tenant is responsible for a base rent payment, plus additional expenses associated with the property. That may include utilities, insurance, maintenance, property taxes, etc.

148

Gross lease

- **Gross lease:** The tenant pays a fixed amount of rent (also called a fixed lease). The lessor pays all expenses associated with the property. Typical for residential property.

149

Percentage lease

- Either a gross or a net lease may be a percentage lease. This type of lease is generally used for retail business leases. The rent is based on a minimum fixed rental fee plus a percentage of the gross income received by the tenant doing business on the leased property.

150

Option and first right of refusal

| AGREEMENT | OPTION | FIRST RIGHT |
|----------------------------------------------------|--------|-------------------|
| Sets sales price in the document | YES | NO |
| Actual contract form used | YES | NO, not typically |
| Potential buyer typically pays a fee for the right | YES | NO |
| Greatest benefit goes to | Buyer | Seller |

151

Question

A neighbor has approached an owner about the possibility of buying the owner's property in the future. The property owner agrees to give the neighbor a future right. Which document would be in the best interest of the property owner?

- A. An option
- B. A lease-purchase contract
- C. A first right of refusal
- D. A purchase contract dated to close in five years

152

Answer

- C. A first right of refusal

A first right of refusal is typically a written notice, often in the form of a letter, stating if the owner ever decides to sell, they will give the hopeful buyer the first right to buy. This allows the owner to set the price and terms in the future, and if the buyer cannot meet the price and terms, the owner can market the property to others. Additionally, the owner is never obligated to sell the property, hence the owner maintains the power in the relationship.

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Contact Information

Questions about the information that was covered today?
Please send your questions to the email address below or
post them in the Community Forum.

nationalleadinstructor@kaplan.com

Thank you for attending today's LEARN session

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Contact Information

We love student questions! As you attend LEARN sessions and work through your regulated education if you have questions we are here for you. Please email us at the email address below, remember to include your state, or post your question on the Community Forum.

nationalleadinstructor@kaplan.com

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What to Expect in Your LEARN Sessions

Attending Kaplan LEARN sessions are **CRITICAL** to your success on exam day.

- All LEARN sessions are either a **PREVIEW** or a **REVIEW** of required study materials:
 - It is a preview, making it easier to understand what you will be studying.
 - It is a review, making it easier to remember what you have already studied.

LEARN sessions supplement your real estate program. Every LEARN session will **BOOST** the knowledge you need to pass your exam.

157

Property disclosures

- Most states require the seller of residential property to complete a property disclosure statement.
- The disclosure may be a statutory form or a written list.
- The disclosure typically covers the following:
 - Land/soil and environmental conditions
 - Structural issues and condition of fixtures, appliances, and equipment
 - Lot size, encroachments, easements, and so on
 - All material defects
- Owners, never agents, complete the seller's disclosure to the best of their knowledge.

158

Property disclosures

- Sellers and licensees must disclose visible and known **latent** material defects to all buyers.
- A **material fact** or defect is one that, if known, might affect the desirability or value of the property.
- An inspection does not easily discover a latent defect.
- State laws determine when the buyer should receive the disclosure.
- Buyers may be able to rescind the purchase contract if they can prove misrepresentation.

159

Agent disclosures

- Most states require brokers to visually inspect the property. Listing agents must do the following:
 - Disclose all known material defects, regardless of the seller's awareness of the defect or instructions to not disclose



160

Agent disclosures

- Request the seller disclose any known latent (hidden) defects
- Upon discovery of a material defect, immediately disclose to the client, then, disclose to all parties to the transaction
- Recommend that buyers have the property inspected

161

Environmental issues

- Most environmental issues fall under the purview of the Environmental Protection Agency (**EPA**).
- Real estate professionals should have a working understanding of environmental issues and disclosure obligations. Additionally, they should be familiar with the environmental issues common to the area in which they practice, look for signs of contamination and other issues, and inform and recommend further investigation into the impact of environmental issues.
- Environmental issues are considered **material facts** that must be disclosed by sellers and brokers.

162

Environmental issues

- Brokers who suspect an environmental issue must disclose it, even if the seller believes it has been cured or removed.
- Brokers should recommend the buyer have the property inspected to verify if there are any concerns.
- Properties with a high level of contamination may need to have the hazard removed or cleaned before the sale.

163

Asbestos

- Asbestos is a mineral with microscopic fibers that can cause respiratory disease.
- Asbestos was widely used before 1978 in a variety of building materials, including pipe and wall insulation, flooring, popcorn ceilings, and siding.
- It is harmful only if the fibers are friable (broken and potentially airborne). The hazard is from inhaling the microscopic fibers, which can cause a variety of respiratory diseases, and cancer.

164

Asbestos

- If a building is being demolished or renovated, abatement (removal) should be done by a licensed professional before demolition.
- **Encapsulation** (sealing in place) is often a better choice than removing asbestos because there is less of a risk of exposing the fibers.
- There is no federal disclosure regarding asbestos, but states may have one.

165

Lead-based paint disclosures

- Elevated levels of lead can cause serious and potentially fatal neurological damage; children and pregnant women are most at risk.
- Federal law requires owners of housing built before **January 1, 1978**, to disclose to prospective buyers and prospective tenants the possible presence of lead-based paint. This is the rule, even if a real estate licensee is not involved in the transaction. Brokers must inform sellers of their obligation to perform the following:

166

Lead-based paint disclosures

- Disclose the location of any known lead-based paint
- Provide a copy of any report on the home
- Give a copy of the EPA pamphlet on lead poisoning
- Offer buyers (but not tenants) a **10-day** opportunity to have the home tested
- Buyers may waive the inspection.
- If not waived, buyers may terminate the contract during the 10-day inspection period.



167

Lead-based paint disclosures

- Owners are **not required** to do a lead inspection or removal.
- The listing broker is responsible for making sure that the purchase agreement includes signed acknowledgments by the buyers and the sellers.
- Property managers and landlords must give a similar disclosure and EPA pamphlet to renters if the property was **built before 1978**.
- The renter does not have to be allowed to test or have lead-based paint removed.

168

Lead-based paint disclosures

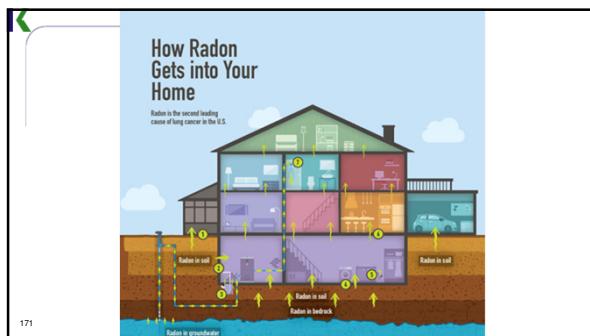
- The Renovation, Repair, and Painting (RRP) program of 2010 covers firms, trades, and individuals performing renovation, repair, and painting that disturbs lead-based paint.
 - Those doing the work must be certified in containment and clean up of lead dust and debris.
 - Homeowners must be provided with the Renovate Right brochure before the work begins.
 - Property owners working on their personal property are exempt but must be in compliance if working on a rental property.
 - It is considered a material fact if a renovation was completed in violation of this rule.

169

Radon

- Radon is a naturally occurring odorless, radioactive gas.
 - Radon moves from the ground to the atmosphere.
 - Radon creates a hazard if it is trapped in a building. It can cause lung cancer.
 - Radon is relatively easy to test for but is impossible to detect without testing. A professional radon tester can discover the presence of radon and recommend a plan to lower the level of radon in the property (mitigation).

170



Radon

- Radon is typically mitigated by adding a ventilation system to move the gas outside, which is typically less expensive than solutions for many other environmental issues.
- There is no federal disclosure regarding radon, but states may have one.

172

Carbon monoxide (CO)

- Carbon monoxide is an odorless gas that is the byproduct of combustion.
- If combustion appliances, furnaces, and wood stoves are working properly and have proper ventilation, CO is not an issue.
- Improper ventilation or equipment malfunction can cause a buildup of CO gas, which can lead to death.
- Carbon monoxide can be detected with a CO monitor/detector.

173

Carbon monoxide (CO)

- Housing with federal assistance requires carbon monoxide detectors to be installed.
- To obtain an FHA loan, carbon monoxide detectors must be installed.
- Many states have carbon monoxide detector regulations as well.

174

Mold

- Toxic mold is created by excess moisture.
- Not all molds are hazardous. Mold can grow anywhere there is oxygen, moisture, and an organic food source.
- If found in housing, mold can be a hazard and may require remediation.
- **Remediation (removal)** of mold should be done per EPA and state regulations.

175

Mold

- There is no federal disclosure law for mold. Buyers may have their inspector check for mold. There may be state disclosure regulations.
- Sellers typically must disclose if there was or is a mold issue.
- Brokers should be aware of indications of mold, such as a musty smell, water damage, high humidity, or water leaks.
- Mold is not likely to be covered by the homeowner's insurance policy.

176

Question

Which of the following is true?

- A. Mold is mitigated.
- B. Asbestos is remediated or mitigated.
- C. Formaldehyde is only dangerous if ingested.
- D. Lead-based paint must be remediated.

177



Answer

B. Asbestos is remediated or mitigated.

- Asbestos may either be removed (remediated) or encapsulated (mitigated).

178



Polychlorinated biphenyls (PCBs)

- PCBs include more than 200 chemical compounds that are not naturally occurring. They are flame resistant and have been used in electrical equipment.
- Commercial use of PCBs was banned in 1979, but they remain in the environment because of the difficulty of destroying them.

179



Chlorofluorocarbons (CFCs)

- CFCs are nontoxic, nonflammable chemicals used as refrigerants.
- Older appliances, such as refrigerators and air conditioners, may leak CFCs and should be properly disposed of to prevent further leakage.

180

Other environmental issues

- Electromagnetic fields and methamphetamine labs also pose potential problems.
- Brokers and salespersons should also be aware of the impact of underground storage tanks, groundwater pollution, brownfields, and waste disposal sites.

181

Disclosures

- Many environmental issues do not have federally required disclosures, but they do have state and/or local disclosure requirements.
- Even if there is no mandated disclosure, agents should assume that **environmental issues are material facts** and should be disclosed.

182

Transfer of title



183

Deeds

- The purpose of a deed is the voluntary transfer of an interest in property between the giver/grantor and the receiver/grantee.
- A seller of real property will always be required to provide a written deed.
- Every deed conveys **whatever interest** is held by the grantor, unless it specifically states that it is conveying a lesser interest.
- The major difference between types of deeds lies in the extent of the promises given by the grantor to the grantee.
- Deeds do not guarantee or prove ownership.

184

Essential elements of a valid deed

- A valid deed **can** convey title if there is a competent grantor who is 18, sane, and sober.
- Seller is the grantor and buyer is the grantee.
- Execution by the **grantor(s)**
- Deed must be signed by all owners to convey the entire property.
- Identifiable grantee (need not be competent)



185

Essential elements of a valid deed

- Description of the land (property description)
 - Property descriptions describe only the land—appurtenances are presumed to transfer with the land unless specifically excluded and are not mentioned in the legal description.
- Consideration
 - Money or something of value: "One dollar and other good and valuable consideration"

186

Essential elements of a valid deed

- Words of conveyance (granting clause)
- States that the seller is making a grant, which conveys the warranties of the deed; for example, creates the difference between a general warranty and a quitclaim deed.

187

Elements of an effective deed

- An effective deed **has** conveyed title.
- For a valid deed to be effective and transfer title, it must be **delivered and accepted**.
- Note: Grantee signature(s) and or recording are not essential for a valid or effective deed.
 - A voluntary deed need not be dated to be valid or effective
 - A voluntary deed need not be recorded to be valid or effective

188

General warranty deed

- Includes the **most promises or covenants**, hence the most protection and the greatest protection **for the grantee/buyer**
- Contains five covenants and warranties of title
- Covenant of **seizan**: The grantor owns and has the right to convey
- Covenant against encumbrances: no undisclosed encumbrances (liens, restrictions, easements)
- Covenant of further assurances: future cooperation in signing additional documents
- Covenant of **quiet enjoyment**: grantee will not be disturbed by others claiming title to the property
- **Warranty forever**: guarantee of defense of title against claims such as liens or easements

189

Special warranty deed

- Grantor only warrants title against defects that may have arisen during Grantor's ownership, not those of earlier property owners.
- No warranties against previous encumbrances.

190

Bargain and sale deed

- Low liability for the grantor
- The only promise made by the grantor is that they have the right to sell the property.

191

Quitclaim deed

- A quitclaim deed is similar to the bargain and sale deed, but it does not even warrant that the grantor has any interest in the property.
- **"If I have an interest, I transfer that interest to you."**
- Frequently used to clear a cloud on title.

192

Title search

- An examiner reviews public records about a property.
- The examiner may be an attorney or a trained title examiner.
- The search may be from the present to the source of the title.
- The source can be a land grant or a U.S. **land patent**.
- This process is used to establish the **chain of title**.
- The chain of title is a complete history of successive ownership documents linked together.

193

Title search



- The title search is the **process** of researching the documents.
- The **chain of title** is the result of the search.

194

Abstract of title

- An abstract of title is a historical **summary** of all recorded documents affecting the title to a given parcel of land. It is created through a title search.
- Some states do not use abstracts of title.

195

Quiet title

- If errors or missing documents are found in a title search (a broken chain), then there is a cloud on title.
- The seller will need to clear the title to convey the property.
- Small issues such as a nonrecorded name change may be corrected with a correction or quitclaim deed.
- Larger issues may require a lawsuit to **quiet title**.

196

Title insurance

- Title search performed by examiner.
- Title report and commitment is issued.
- The title report states the **current condition** of the title and is a commitment to insure.
- It shows the current status of recorded encumbrances.
- It does not show the history of encumbrances.

197

Title insurance

- The commitment lists policy exceptions, which are defects and encumbrances that have been discovered or may exist and are **not covered** by the policy.
- Standard exceptions: items never covered; buyer responsible for checking.
- Special exceptions: clouds specific to the property discovered by the examiner.
- The buyer may offer objections before closing.

198

Standard title insurance policy

- The standard title insurance policy is sometimes referred to as the **buyer's or owner's policy**.
- The standard policy protects the buyers and their heirs.
- Excludes exceptions/problems listed in the title report.
- **Cost of coverage is based on the sales price of the property.**
- Paid by the seller or the buyer as per the purchase contract.
- Coverage continues until the property changes ownership.

199

Standard title insurance policy

- Covers matters **of record** that are not listed as exceptions, including the following:
 - Errors in the title examination
 - Errors in the abstract
 - Errors in the public record, such as misfiled documents
 - Hidden defects, such as forgery, incompetency, misrepresented marital status, and improperly prepared deeds

200

Extended title insurance policy

- Lenders typically require an extended policy of title insurance.
- An extended title insurance coverage policy adds protection against problems that are not a matter of public record but would probably be discovered through inspection (**actual notice**) of the property, such as the following:
 - Parties in possession or adverse possession issues
 - Matters of the survey, such as encroachments
 - Gap period—from title commitment through recording the deed

201

Extended title insurance policy

- Coverage is based on the **loan amount**.
- Often paid for by the buyer, but the seller could also pay.
- **Coverage diminishes with each loan payment and ceases to exist when the loan is satisfied.**
- A lender usually requires this policy; it is referred to as a lender's policy.
- An owner could request the extended policy in which case the coverage would be based upon the sales price and the policy would continue until a change in ownership happens.

202

Marketable title

- Marketable (or merchantable) title is ownership free from reasonable doubt. The buyer's goal is to obtain a marketable title.
- To know what makes valid documents, brokers and salespeople need to understand what makes title marketable, how ownership issues may impact title transfer, the essential elements of contracts and deeds, and who is required to sign each document in the transaction.

203

Marketable title

- Defects on title are things such as easements and liens.
- These will be shown on the **exceptions** portion of a title insurance policy.
- These defects are referred to as clouds on title and may make the property difficult or impossible to sell without having the defects cleared from title.

204

Alienation

- **Voluntary alienation** is where the owner has agreed to sell the property and deliver a deed to the grantee. Although this deed should be recorded, it is valid without recordation.
- A voluntary alienation becomes effective upon delivery to and acceptance by the grantee.



205

Alienation

- **Involuntary alienation** is where someone other than the owner sells the property and delivers a deed to a new owner, i.e. after a foreclosure sale. These would include trustee's deeds and sheriff's deeds. This would also include an eminent domain taking. These deeds need to be recorded to be valid.
- An involuntary alienation becomes effective upon its recordation.

206

Recordation

- Policies and procedures that regulate recording are established by each state.
- These laws also determine who is responsible for organizing and maintaining recorded documents.
- Recordation does not prove the validity of the document.

207

Recordation

- Recordation gives **constructive** or legal notice.
- It establishes the priority of interests—"first in time, first in right".
- A voluntary deed does not have to be recorded to be valid.
- A grantee who does not record a deed risks having another party claim title to the property.

208

Actual notice

- Actual notice is achieved when a person is informed of something.
- Parties can inspect the property for visible claims and actual notice, such as parties in possession or encroachments.

209

Settlement procedures

- The process of settlement is the accounting for all funds received and disbursed in a particular transaction.
- This includes, when contractually required, the payment of all liens, loans, and bills before providing the net proceeds to the seller.
- Prior to the actual settlement occurring, the buyer and the seller would be provided with a **Closing Disclosure** statement for their approval.

210

Settlement procedures

- **Prorations** would occur during settlement.
- If an escrow is used, the escrow officer would act as the settlement agent.
- If no escrow exists, a settlement agent would be retained.

211

Transferring foreclosed property

- Transfers of a property after a foreclosure sale are usually done with a trustee's deed or a sheriff's deed.
- Some sales may be subject to a statutory redemption period. During that time, the buyer can maintain ownership of the property by paying all sums due, including the costs of collection. Should a redemption occur, the buyer at the foreclosure sale would receive their money back.

212

Probate sales

- The probate court typically handles the transfer of an interest in real estate in the event of an owner dying. The probate court may retain jurisdiction over the sale of the real property in the estate.
- The **executor or administrator** of the estate may list the property for sale.



213

Probate sales

- The executor or administrator of the estate may agree to a contract for the sale, subject to the court's approval.
- State laws may require that other bidders be allowed to bid at the court's approval hearing. The court may have approval of the agent's commission as well.

214

Home warranty programs

- Home warranties, also known as Residential Service Contracts, frequently cover most of the home, including all major systems and appliances.
- Home warranties are sometimes provided as part of the listing or offer.
- The terms and length are determined by the contract with the warranty company.
- Warranties usually feature a deductible and may exclude some items from coverage.
- Brokers should make sure buyers know that warranties are available.

215

New home warranties

- This warranty is provided on newly constructed homes by the builder and must meet strict underwriting guidelines. It is also known as a **warranty of habitability or suitability**.
- Covers roof or other structural failure, poor materials or workmanship, or faulty appliances after closing.
- Does not cover structural damage from outside forces.
- The requirements for builder warranties can be set at the state or local level.
- Third-party companies can give buyers additional coverage for new construction.
- Brokers should make sure buyers fully understand the limits of all warranties.

216

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220

Financing

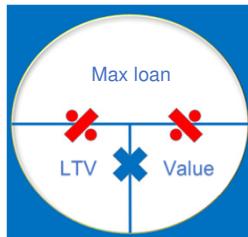
- Financing is an essential part of most real estate transactions.
- Even if a real estate agent is not involved in the financing, it is important that they understand the process and can assist their real estate clients in that understanding as well.
- A buyer of a property paying in the low 5% interest rate might, over 30 years, pay more for the interest on their loan than the cost of the property itself.

221

Loan-to-value

- The loan-to-value reflects the loan amount's ratio to the property's value. It will also reflect the **maximum** a lender will loan on a particular transaction.

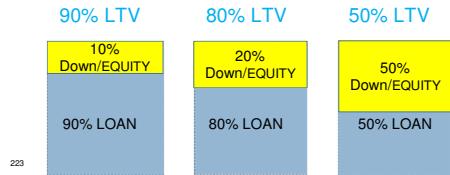
$$\bullet \text{ LTV} \times \text{Value} = \text{max loan amount}$$



222

Loan-to-value

- The LTV is based on the appraised value or sales price of the property, whichever is **less**.



Leverage

- Leverage refers to the effect of using borrowed money to finance an investment.
- The higher the loan-to-value ratio (the more money borrowed), the higher the leverage.
- Leverage can magnify the gains or losses achieved from an asset.

224

Payment

- When lenders loan money (**the principal**), they will charge an annual rate of return (**the interest**) on the amount that is still owed. Traditionally, borrowers make a monthly payment on their mortgage that covers the interest and some principal (except for interest-only loans). This would be referred to as **P**. Some borrowers also pay the lenders monthly for their property taxes and their fire insurance (**TI**). Lenders hold these funds and pay the bills when due. If all of this is paid to the lender it is referred to **PITI**.

225

Question

The value, which is based on the lower of the sales price or appraised value, is used in calculating the:

- A. loan to value
- B. discount points
- C. loan origination
- D. equity

226

Answer

A. loan to value

- Loan to value is the ratio of value to loan, and value is the lower of sales price or appraised value.

227

Loan process

- The borrower begins the process by providing the lender with a loan application, along with authorization for the lender to obtain a credit report and verifications of deposits and employment.
- Before the borrower even enters into a purchase agreement for a home, the lender may begin the underwriting process to provide the borrower with a pre-approval letter.

228

Debt to income (DTI)

- Lenders will look at a borrower's debt-to-income ratio. There are two parts to this test, housing only and then housing plus monthly debt, car loans, student loans, and minimum payments on a credit card.
- **Housing debt** is PITI and any Homeowners Association costs. Traditionally, these should be 28% or less of a borrower's gross monthly income or less. This ratio is determined by the loan program.

229

Debt to income (DTI)

- Total debt would include housing expenses plus long-term debt. Traditionally, this should be 36% or less of the borrower's gross monthly income, or less.
- Different loan programs may provide for different DTI ratios.
- Loan approval is based upon whichever ratio provides for the **lowest** loan amount.

230

Credit history

- Lenders will look at a borrower's history of credit. (FICO score).
- This will include current credit, as well as closed credit.
- A derogatory is an imperfection in a borrower's prior repayment of a debt. Derogatories would also include prior foreclosures, deeds-in-lieu of foreclosure, and bankruptcies. These events may require a waiting period to lapse before a borrower would qualify.

231

Promissory note

- Legal document that is evidence of the debt. Secured by the mortgage or deed of trust.
- Held by the lender until the loan is fully repaid.
- Personal promise of the borrower to repay a fixed amount.
- Terms of repayment
- Signature of the borrower; the lender does not sign
- A promissory note alone does not create a lien on a property.

232

Promissory note

- Most real estate notes are transferable, which allows them to be sold.
- **Special provisions**
 - **Acceleration clause** — If the borrower defaults, the lender can demand immediate payment of the entire balance.
 - **Defeasance clause** — When debt is paid the lien must be removed.
 - A mortgage is removed with a **satisfaction**
 - A deed of trust is removed with a **deed of reconveyance**.
 - Satisfaction or reconveyance deed removes lien and should be recorded by the borrower.

233

Promissory note

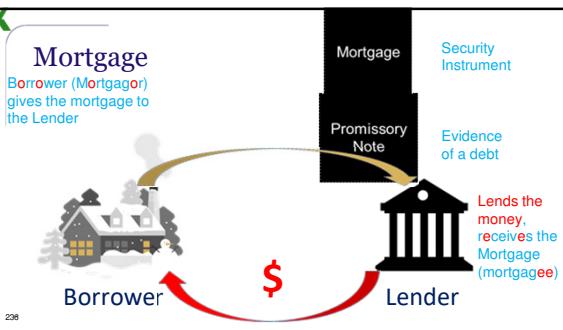
- **Due-on-sale clause** — also called an alienation clause
 - Provides that when the property is **sold**, the lender may demand immediate repayment of the entire debt. The failure to do so is an event of default which may trigger an acceleration.
- **Power of sale clause** — This is a provision/clause that allows a lender to obtain a foreclosure without the use of the courts, a non-judicial foreclosure. The use of this differs from state to state.
- **Prepayment clause** — May include penalties for early payoff (prepayment penalty)

234

Mortgage or deed of trust (**security instruments**)

- Instruments that pledge (hypothecate) property as security for a debt
- Mortgage creates a lien (lien theory) a deed of trust is treated as if it creates a lien although it relates to title theory.
- Allows for foreclosure if the borrower defaults on the note — the foreclosure process is state-specific
- Mortgage: two-party instrument
- Borrower is the **mortgagor** who gives the mortgage to the lender.
- Lender is the **mortgagee** who receives mortgage from the borrower.
- **Borrower = mortgagor**
- **Lender = mortgagee**

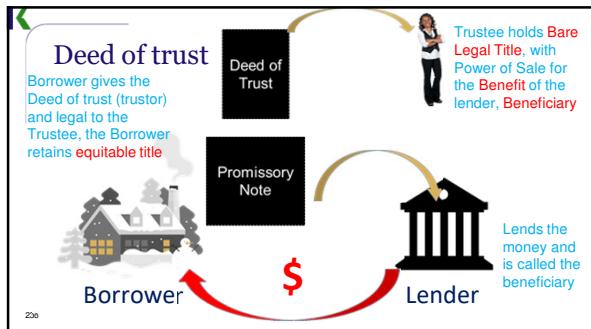
235



Deed of trust

- Deed of trust: **three-party** instrument.
- Borrower is the **trustor**.
- Lender is the **beneficiary** (benefits from the trust).
- **Trustee** — A neutral third party who is conveyed the legal title to the property by the trustor.

237



Question

In a mortgage, the lender is called the

A. mortgagor
B. mortgagee
C. lendee
D. obligee

239

Answer

B. mortgagee

- MEMORY TOOL:
- Borrower = Mortgagor (two o's)
- Lender = Mortgagee (two e's)

240

Conventional mortgages

- The loan repayment is based solely upon the borrower's ability to repay; these loans are not insured or guaranteed by the government.
- The LTV can be up to 80%.

241

Conventional mortgages with PMI

- A buyer (borrower/mortgagor) pays PMI when the **LTV is above 80%**. This is an additional monthly fee to the borrower.
- Private mortgage default insurance (PMI) protects lenders from some loss due to a deficiency, which might occur after a foreclosure.
- PMI does not **pay off the full loan**.
- The advantage for the borrower is a **smaller down payment**.
- These loans would require taxes and insurance to be escrowed and paid as part of PITI.

242

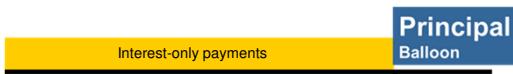
Conforming loans

- The Federal National Mortgage Association (**Fannie Mae**) and the Federal Home Loan Mortgage Corporation (**Freddie Mac**), part of the secondary market, establish borrower and property guidelines. If lenders follow these guidelines and stay within the loan limits, those loans would be considered conforming loans and can readily be sold in the secondary market.
- Loans, like jumbo loans, that do not fall within those guidelines are nonconforming. Nonconforming loans cannot be sold to Fannie Mae, Freddie Mac, or Ginnie Mae and, when sold, are more costly to sell.

243

Term (straight) loan

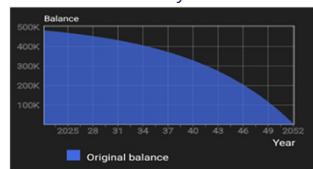
- Interest-only payments until maturity or at end of term.
- Entire principal paid back in one lump sum balloon payment, hence there is zero amortization.



244

Fully amortized loan

- Equal consecutive installments of principal and interest
- Balance decreases with each payment
- Balance becomes zero at maturity



245

Partially amortized loan

- Equal payments of principal and interest
- Lump sum balloon payment



246

Adjustable-rate mortgage (ARM)

- The interest rate is subject to change based on economic index or indicator
- Index + margin = rate
- May include adjustment caps and/or lifetime rate caps

247

FHA (Federal Housing Administration) loan

- FHA **insures** the lender against loss due to borrower default.
- A mortgage insurance premium (**MIP**) is paid by the borrower. MIP pays for Mutual Mortgage Insurance (**MMI**)
- The borrower will pay an upfront Mortgage Insurance Premium, which may be financed, and they will pay monthly premiums as well.

248

FHA (Federal Housing Administration) loan

- Loan funds come from approved lenders who set the interest rates charged.
- The properties must be owner-occupied.
- The purchase contract must include an escape clause.
- There is no prepayment penalty.
- FHA loans made now are assumable, if the buyer qualifies and if the lender approves the assumption.

249

VA (Department of Veterans Affairs)

- The VA **guarantees** lenders against losses on home loans to eligible veterans.
- Eligible veterans: active National Guard members, veterans, or retired military reserve members, actively serving in the military, retired from the military, honorably discharged from the military, spouse of a veteran missing or killed in the line of duty
- No insurance premium
- Has a funding fee that can be financed
- No prepayment penalty or due-on-sale clause allowed

250

VA (Department of Veterans Affairs)

- The veteran must occupy the property as a primary residence.
- No down payment is required so the loan-to-value ratio can be up to **100%**.
- VA requires the following two certificates:
 - Certificate of eligibility/entitlement
 - Certificate of reasonable value (CRV)
- The purchase agreement must contain an escape clause.

251

Seller financing

- A seller may provide financing for the sale of their property.
- The seller may provide the primary financing, a first loan.
- The seller may also provide just a junior loan, usually to assist the buyer in achieving a 20% down payment.
- The seller usually uses a promissory note and deed of trust or mortgage. The title transfers to the buyer, and the seller **"takes back"** a lien at closing. The seller becomes the lender. This may be referred to as a seller **carry-back**.

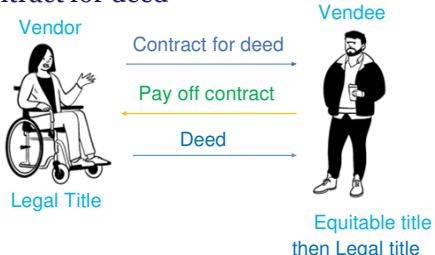
252

Seller financing-Contract for deed

- A contract for deed is also known as a **land contract** or an **installment contract**.
- The seller is called the "vendor." The buyer is called the "vendee."
- The purchase price is paid in installments to the seller, and the seller delivers a deed (legal title) when the final payment is made.
- In some states, it might be easier to take back the property if the buyer defaults on the contractual agreement.

253

Contract for deed



254

Reverse mortgage

- For seniors only, 62 and over.
- The borrower receives a lump sum upfront, monthly advances, or a credit line from the lender.
- The mortgagee (lender) pays the mortgagor (borrower)
- Allows seniors to access equity in the home without selling it.
- The amount borrowed is repaid upon the death of the mortgagor, upon the sale of the property, or when the borrower no longer occupies the property as their primary residence.
- Negative Amortization: Since the loan is not repaid, the interest is added to the principal, and the **debt grows**.

255

Home equity loan

- The borrower takes a second loan against the equity in their property.
- Some home equity loans are paid out in a lump sum.
- Others are home equity lines of credit (**HELOC**).
- The borrower receives access to the full loan amount.
- It is similar to a credit card, but the property is used as collateral for the debt
- Advances are limited to the difference between the approved loan amount and the current balance owed.

256

Construction loan

- Interim financing is made available in installments (draws) as improvements are completed
- Typically, adjustable-rate/short-term loans
- The lender may require a “**take-out**” loan commitment if the builder intends to hold the property.

257

Package mortgage

- Real property plus personal property
- Example: furnished condominium

258

Blanket mortgage

- Typically used by developers
- More than one parcel pledged
- **Partial release clause** allows individual parcels to be released from lien as the balance is paid down by the sale of parcels
- Payments for releases are usually calculated to pay off the loan with parcels left free and clear for the owner.

259

Blanket Mortgage

900,000 loan
This loan is
paid off when
the 8th
property is
sold.



260

Purchase money mortgage

- Any loan that is acquired to assist in the acquisition of a property, i.e. some or all of the proceeds go to the seller, is referred to as a purchase money mortgage. The source of the loan, even if from the seller, is immaterial.

261

Discount points

- One point = 1% of the **loan amount**
 - Paid to the lender to lower the interest rate on the loan
 - Lender charges points to increase the yield on a loan
 - Paid by buyer or seller at closing
- | | Rate | Points |
|--|-------|--------|
| | 5.125 | 0 |
| | 5.00 | 1 |
| | 4.875 | 2 |

262

Foreclosure

- Most foreclosure laws are created at the **state level** but share some common concepts.
- Here are the two phases of a foreclosure:
 - **Reinstatement:** To bring the loan current
 - **Redemption:** To pay off the entire outstanding loan
- If the sale proceeds are insufficient, the foreclosure sale removes liens junior to the foreclosing lien.
- The foreclosure bid winner then has the right, based on state laws, to obtain title to the property.

263

Foreclosure

- The types of foreclosures include the following:
 - Foreclosure by judicial (legal) action
 - Nonjudicial foreclosure
- States will dictate which methods are allowed in the state and the timetables involved.

264

Foreclosure

- Reasons for loan acceleration and foreclosure
 - Nonpayment of principal and interest
 - Nonpayment of taxes
 - Removal of improvements without lender's permission
 - Insurance coverage lapse
 - Waste would include deferred maintenance that lowers value below what is owed.
 - Alienation without consent (if there is a due-on-sale clause)

265

Deed in lieu of foreclosure

- The borrower deeds to the lender to avoid foreclosure.
- It does not wipe out secondary liens.
- The lender may not be willing to accept.
- If the property has junior liens, the lender takes title subject to these liens.

266

Short sale

- A short sale occurs when the borrower needs to sell the property and the market value of the property is insufficient to satisfy the loan balance.
- The broker lists the property for sale for less than what is owed on the loan but at a fair market value.
- Once an offer is accepted, the lender may or may not agree to accept the reduced (deficient) price.
- The lender may require the seller to pay any deficiency. If there is a deficiency, the seller may face tax consequences.

267

Truth in Lending Act (TILA) Regulation Z

- The Truth in Lending Act (TILA) is a federal law that requires lenders to disclose the complete cost of credit to consumers.
- The act requires that borrowers must be given a three-day right of rescission on **home equity loans and the refinancing of a borrower's primary residence**.
- Under the federal Truth-in-Lending Act, if only the annual percentage rate (APR) is included in the ad, then no further disclosures are required in the ad.

268

Truth in Lending Act (TILA) Regulation Z

- If any number relating to the loan other than the APR or maximum loan amount appears, it will "trigger" full disclosure which includes: the total finance charges associated with the loan including nominal interest, origination or assumption fee, borrower-paid points, and mortgage insurance costs, the total number of payments and the amount financed.

269

Real Estate Settlement Procedures Act (RESPA) Regulation X

- The Real Estate Settlement Procedures Act (RESPA) regulates lenders, real estate professionals, and companies that provide closing services. RESPA also standardizes real estate settlement practices in residential mortgage transactions. The law requires that certain disclosures be made to loan applicants concerning all closing costs the buyer will incur. The goal of RESPA was to standardize settlement/closing practices on all residential transactions.
- RESPA prohibits the payment of **kickbacks**, or unearned fees, in any real estate settlement service.
- RESPA prohibits a commission when no services are rendered.

270

TILA-RESPA Integrated Disclosure Rule (TRID)

- TRID's purpose is to simplify the forms that are used to promote the informed use of consumer credit by consumers and to make it easy for borrowers to compare loan offerings.
- It requires two disclosures about a loan's terms and costs to standardize how costs associated with borrowing are calculated and disclosed.
- TRID'S authority was transferred to the Consumer Financial Protection Bureau (CFPB), which was established under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

271

TILA-RESPA Integrated Disclosure Rule (TRID)

- A special information booklet produced by HUD is required in purchase money mortgage transactions.
- It must be delivered at the time of application or within three days following submission of an application.
- Lender must provide to the borrower.

272

Loan Estimate form

- The Loan Estimate form must be provided to the borrower within **three business days of applying** for a loan.
- The Loan Estimate enables the borrower to shop around for a loan in a more effective manner.
- At least 10 days after the original loan estimate is provided must lapse before a loan may be funded.
- A **revised** **Loan Estimate** form generally can be provided no later than seven business days before consummation.

273

Closing Disclosure form

- The Closing Disclosure form must be provided to the borrower at least **three business days before closing** on a loan. If the form is found to have been inaccurate and is revised, a new three-day waiting period is initiated. The most common trigger for a new three-day waiting period is if a fixed-rate loan interest rate increases by more than 1/8%.
- The three days are intended to allow the borrower to ask the lender any questions about the loan before going to the closing.

274

Closing Disclosure form

- The Loan Estimate and Closing Disclosure are intended to provide the borrower with the ability to compare the final actual costs with the estimate initially provided by the Loan Estimate. Unless there is a change in circumstances, the lender cannot add fees or change their fees from the Loan Estimate

275

Equal Credit Opportunity Act (ECOA) Regulation B

- ECOA makes it unlawful for any creditor to discriminate against any applicant, concerning any aspect of a credit transaction, based on race, color, religion, national origin, sex, **marital status**, or **age** (provided the applicant can contract).
- A creditor cannot discriminate based on the fact that all or part of the applicant's income derives from a **public assistance** program.
- A creditor cannot discriminate based on the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

276

Primary market

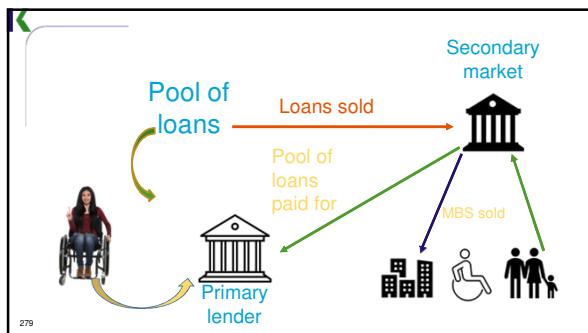
- Where loans are made to borrowers: mortgagee to mortgagor
- Mortgage bankers provide financing; they are direct lenders.
- Mortgage brokers solicit borrowers and lenders.
- Mortgage brokers act as intermediaries.

277

Secondary market

- Where loans are bought and sold by mortgagees to mortgagees (lenders)
- In the secondary market, existing mortgages are bought from banks to provide capital to the primary mortgage and lending process.
- The secondary market is also where mortgage-backed securities are sold to investors.
- If their mortgage is sold on the secondary market, borrowers may be directed to send payments to a different address or company, but their loan terms do not change.

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263

Government rights



264

Memory Aid

Your memory aid for these four government rights is PETE:

Police Power
Eminent Domain
Taxation
Escheat

265

Introduction

- Certain government rights over real estate are superior to an individual owner's property rights. The government has the right to:
 - decide on land use,
 - take privately-owned real estate for public use,
 - impose property taxes, and
 - take title to abandoned or "unowned" realty.

286

Question

What is the memory tool for government rights?

- A. POPE
- B. PITI
- C. PETE
- D. POOL

287

Answer

C. PETE

- P = Police Power
- E = Eminent Domain
- T = Taxation
- E = Escheat

288

Police power

- The word “police” comes from the Greek word “polis,” meaning city. In ancient Greece, the basic unit of government was the city.
- Police power is governmental power, typically delegated by the states to the local level.
- It can also be exercised at the county, the state, and even by the federal government.

289

Police power

- How is the power exercised? The government entity enacts and enforces laws governing land use.
- What is the goal of police power generally? To govern land use to enhance and protect public health, public safety, public welfare, and prevent uncontrolled growth.
- Zoning may be used to implement an overarching comprehensive or master plan.

290

Police power

- Planning, **zoning**, building codes are all examples of police power at the local level of government.
- This governmental power determines how land can be **developed**, and might include legal use of the property, lot sizes, setbacks, building heights, environmental protection, and density.

291

Building codes and permits

- Another element of the government's police power relates to building codes and permits. A **building permit** is issued by municipalities to make sure construction or repair is done in compliance with local planning and building codes. These codes relate, among other things, to types of materials, electrical, plumbing, and fire prevention. If there is a difference between national, state, or local codes, the strictest code is followed.
- If the building or repair is "up to code," the municipal inspector will issue a **certificate of occupancy**.

292

Zoning

- Most counties create zoning classifications to implement the master plan. These may include things such as the following:
 - Residential
 - Commercial
 - Industrial/manufacturing
 - Agricultural
 - Mixed

293

Question

Zoning is part of what government right?

- A. Police power
- B. Escheat
- C. Eminent domain
- D. Taxation

294

Answer**A. Police power**

- Police power controls how you USE your property. This power includes zoning, land use that is controlled by government at the local level.

295

Typical zoning controls

- Zoning is set at the local level to help municipalities control land use.
 - Rezoning or amendment** is a zoning change for an entire area.
 - Downzoning** is a zoning change from dense to less dense usage.
 - Upzoning** is a change from less dense to more dense usage.

296

Nonconforming use

- A **nonconforming use** allows the owner to continue a present use that no longer complies with current zoning. This is often known as being **grandfathered** or a grandfather clause. The local government determines if this nonconforming use will be allowed and can impose many restrictions on the owner of the property. (Example: The owner may not enlarge improvements or rebuild if improvements are destroyed).

297

Variance

- A **variance** allows an individual owner to vary or deviate from strict compliance with zoning **to relieve or prevent economic hardship**. A variance does not change the regulation.

298

Question

A variance can be requested under what conditions?

- A. You don't agree with the current zoning
- B. To allow an owner to vary or deviate from current zoning
- C. Due to economic hardship caused by the current zoning
- D. Both B and C

299

Answer

D. Both B and C are correct answers.

- To allow an owner to vary or deviate from current zoning
- Due to economic hardship caused by the current zoning

300

Conditional use permit

- A conditional use (also called a "special use exception") is a type of variance that allows a nonconforming land use. Property owners do not need to make a claim of economic hardship to get government approval of a conditional use.

301

Eminent domain

- The U.S. Constitution gives the government the right to "take" **private land** for public use. This power can be exercised at the federal, state, and local level. However, the government entity exercising this power must pay compensation for the property (value plus damages).

302

Quasi-government entities

- quasi-governmental entities may also have the power of eminent domain, and must also pay property owners to take private property for public use.
- These quasi-governmental entities include transportation, public utilities, community development agencies, etc.

303

 Question

If your property is in the process of being taken by the government right of eminent domain,

- A. you will be compensated up to fair market value today.
- B. you may begin a lawsuit to challenge the taking of your property.
- C. you may receive additional sums for damages.
- D. all of the above.

304

 Answer

D. all of the above.

305

 Eminent domain

- Eminent domain is one example of **involuntary alienation**, meaning the owner did not agree to give up title to the property.
- A government entity exercises the power of eminent domain through the courts in a legal process called **condemnation**.

306

Real property taxes

- Property taxes are paid at the local level where the property is located. The formula for calculating property taxes is up to the state, and based on the assessed value (not the market value) of the property. The Latin expression for "according to value" is "ad valorem." These taxes are enforced by a foreclosable lien, meaning the property can be lost through forfeiture, if property taxes are not paid.

307

Real property taxes

- Property taxes have priority over and are **senior to all other liens**. Why is this so important? In the event of a property tax default or foreclosure, liens are paid off in the order of priority. That means that—if there is a default—property taxes are **always** paid first.

308

Real property taxes

- The appropriate local tax authority determines the **assessed value** of each parcel of real estate. That assessed value is used by the property tax assessor.
- An **appeal** of an assessed value may be made by the owner of the real estate to the government, if the assessed value appears excessive.

309

Special assessments

- Special assessments are charges against specific properties that **benefit** from a public improvement.
- Found by reading an assessment roll.
- If not paid, can create a specific lien with the right of foreclosure.
- Some states require voter approval.
- Has second priority to property taxes.



310

Question

Which of the following is true with regard to real property taxes?

- A. You can appeal them
- B. They are senior to all other liens
- C. They are determined by local officials
- D. All of the above are correct

311

Answer

- D. All of the above are correct

Property taxes can be assessed by the county, city, a parish or whatever entity is used in your specific area.

312

Escheat

- Escheat is the government's **reversionary right** when a property is **abandoned** or when an owner dies **intestate** (no will) and **without heirs**.
- Under federal and state law in the U.S.A., all property must be owned. If the owner abandons the property or dies without a will and without heirs, all real and personal property will revert to the state after a statutory period.

313

Covenants, conditions, and restrictions

- CC&R's of record are a set of rules governing the use of a certain piece of real estate in a given community. These rules are created by a private developer, not a **governmental** entity. A CC&R can, for example, regulate the fences around a house, the type of garbage cans allowed, and whether parties can park on the street after a certain hour.
- While these CC&Rs may originally be created by a private developer, they can be enforced legally in court.

314

Covenant

- A covenant is a **promise** to do or not do certain things. Example: A homeowner may be prohibited from parking an RV in the driveway or on the street in front of a home.

315

Condition

- A condition is stronger than a covenant. In fact, the violation of a condition **may result in the loss of title.**

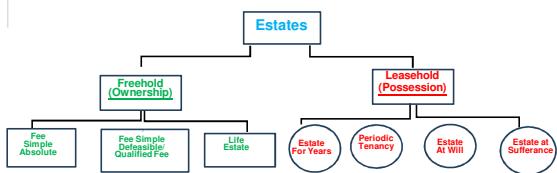
316

Restrictions

- Restrictions are usually placed on the deed by the builder to maintain consistency in the subdivision. Examples: Landscape plan must meet the certain criteria, only white fences, only certain color exterior paint is allowed.

317

Estates



318

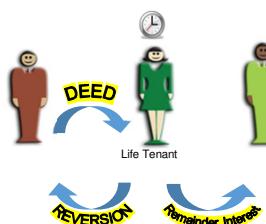
Freehold estates

"Freehold" means ownership. A freehold estate is held by the owner of the property, and is typically created through a deed.

1. **Fee simple absolute** lasts forever and features the maximum control of use. This is the **highest** estate in realty you can have.
2. **Fee simple defeasible** lasts "so long as" the **condition** is not broken.
3. **Life estate** lasts for the duration of a person's lifetime.

319

Life Estate



320

Life estate

- During the **measuring life**, the life tenant has all of the rights an owner would have.
- "The life tenant does not need to be the measuring life. If it is someone other than the measuring life it is called "pur autre vie."
- Once the measuring life ends, the estate will transfer back to the grantor (called "reversion") or transfer to a remainder holder. This is the END of the life estate and the owner now has a fee estate.

321

Less than freehold (leasehold estate)

"Less than freehold" or "non-freehold" is the estate **a tenant** renting real estate holds in the rental property.

1. **Estate for years:** must have a definite beginning and a definite ending date. It is a lease, so no notice is required to end the relationship between tenant and owner.
2. **Periodic tenancy** is from period to period, like a typical rental agreement for residential property. Notice is required from either the tenant or the landlord to end the agreement.

322

Less than freehold (leasehold estate)

3. **Estate at will:** The old Common Law allows either the landlord or the tenant to end this when they choose (at will). However, most state laws now require notice from one party to end the relationship.
4. **Estate at sufferance:** Tenant has overstayed their right of possession. This is the **lowest** estate a tenant can have.

323

Question

Which of the following estates are the highest and lowest?

- A. Fee simple absolute, estate for years
- B. Fee defeasible, estate at sufferance
- C. Fee simple absolute, estate at sufferance
- D. Life estate, periodic tenancy

324

Answer

C. Fee simple absolute, estate at sufferance

- Fee simple absolute is the highest ownership interest you can have in real property.
- An estate at sufferance is a leasehold estate that has the lowest interest in real property. The tenant is a holdover tenant who came into possession lawfully.

325

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Thank you for attending today's LEARN session

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329

Real Estate Practice

- What do we mean by the practice of real estate?
 - Real Estate Practice includes the lawful, professional activities of a person or a brokerage firm in connection with the sale, purchase, lease, management, or transfer of real property.

330

Civil Rights Act of 1866

- Prohibits discrimination in the sale and rental of property based on **race**, with **no exceptions**
- This was reinforced in 1968 in the case of Jones v. Mayer in which the U.S. Supreme Court ruled that Congress can regulate against discrimination by private parties.

331

Federal Fair Housing Act/ Civil Rights Act of 1968

- Protected classifications in the sale and rental of residential property
 - Race
 - Religion
 - Color
 - National origin
 - Sex (Added in 1974)
 - Familial Status (Added in 1988)
 - Disability (Added in 1988)

332

Fresh Corn

- F - familial status
- R - race
- e - equal
- S - sex
- H – handicap(disability)
- C - color
- o - opportunity
- R - religion
- N - national origin



333



Federal Fair Housing Act/ Civil Rights Act of 1968

• Familial status

- Added in 1988.
- Protects families with children under the age of 18 and includes pregnant women and those fighting for child custody.
- A landlord, however, may refuse to rent to a family based on housing regulations (e.g., regulations may limit the number of occupants per bedroom, senior housing may restrict/prohibit minor children, etc.).

334



Federal Fair Housing Act/ Civil Rights Act of 1968

• Disability

- Added in 1988.
- Protects those with physical or mental impairments, HIV/AIDS, and in recovery from addiction.

335



Federal Fair Housing Act/ Civil Rights Act of 1968

• Gender identity and sexual orientation:

- The Civil Rights Act prohibition against sexual discrimination extends to prohibiting discrimination based upon gender identity or sexual orientation.

336

Federal Fair Housing Act/ Civil Rights Act of 1968

- Brokers must display the equal opportunity poster in each office or place of business.
- **Failure to display the poster can shift the burden of proof to the broker in an alleged discrimination complaint.**
- The equal housing logo should be used in advertising but it is not a federal requirement.



337

Question

Which, if any, law protects against discrimination against an individual only because of their race?

- A. Federal Fair Housing Act of 1968
- B. Post-Civil War 1866 antidiscrimination law
- C. Federal Fair Housing Act, as amended in 1972
- D. None of the above

338

Answer

- B. Post-Civil War 1866 antidiscrimination law

339

Federal Fair Housing Act/ Civil Rights Act of 1968: Exemptions

- Unless prohibited by state or local law, discrimination is allowed based on religion, color, sex, national origin, familial status, or handicap/disability in the following situations:
- Rental or sale of a single-family home by the owner (FSBO).**
- Religious organizations may be allowed to only sell or rent to their religion so long as membership is not racially discriminatory
- Clubs may limit sales or rentals to club members so long as their memberships are not racially discriminatory.

340

Federal Fair Housing Act/ Civil Rights Act of 1968: Exemptions

- Rental of units in a one-to-four-unit building where the owner occupies one of the units.**
 - No exemption for buildings with more than four units, even if the owner or owner's family occupies a unit.
- No real estate professional may take part in the transaction.**
 - No discriminatory advertising, even when the exemption is lawful.

341

Federal Fair Housing Act/ Civil Rights Act of 1968: Exemptions

- Private clubs**, not open to the public, may restrict lodgings to members only. The club may not discriminate membership based upon race, color or national origin.
- Religious organizations** may give preference to their members for residential housing. The religion or denomination must not limit membership based on race, color, or national origin.

342



Federal Fair Housing Act/ Civil Rights Act of 1968: Exemptions

• Senior housing

- Congress passed the Housing for Older Persons Act (HOPA) in 1995 to permit housing intended for those 55 and older.
- At least 80% of the units are occupied by at least one person aged 55 or older, or 100% of the occupants are 62 or older.
- Allowed to refuse occupancy in rental or sale of units to families with children.

343



Federal Fair Housing Act/ Civil Rights Act of 1968: Exemptions

• Senior housing

- All advertising must comply with the law; there are no exemptions.
- All advertising used to advertise housing, including online blogs and social media, falls under this rule.

344



Question

Two brokers own a rental property. They do not want to rent to anyone with children. Which statement is true?

- A. As long as they don't advertise, they can refuse to do so.
- B. They can do what they want.
- C. They cannot ever do that.
- D. They can only discriminate in the sale, not the rental.

345

Answer

C. They cannot ever do that.

- Once licensed, a real estate agent cannot rely upon the exceptions to the discrimination rules.

346

Steering and blockbusting

- Steering** is directing potential buyers to or away from particular areas as a means of discrimination.
- Blockbusting**, also called **panic selling**, is suggesting neighbors sell because a member of a protected class has moved into the area.

347

Redlining

- Historically, Redlining was refusing to offer or limiting services in certain areas because of race.



348

Question

Maria Sanchez, a buyer who belongs to a protected class, tells you, a real estate agent, her criteria for a home, and where she wants to live. It is a geographic area predominantly occupied by others who belong to the same protected class. There is another area nearby in the buyer's price range and with the amenities that the buyer wants. What do you do?

- A. Only show the buyer the area that was asked for
- B. Only show the buyer the areas that you think are better
- C. Show the buyer the property in both areas and then ask what the buyer would like to do
- D. None of the above

349

Answer

C. Show the buyer a property in both areas and then ask what the buyer would like to do

- Even though the buyer asked for a specific neighborhood, you should at least let a buyer know what other areas might suit that buyer's specific needs. Doing so will not only allow the buyer to make an educated decision on where to buy, it will also alleviate the appearance of steering.

350

**Federal Fair Housing Act/
Civil Rights Act of 1968: Prohibitions**

- It is a violation of the federal Fair Housing Act to do any of the following related to housing accommodations (residential property) based on membership of a protected class:
 - Refuse to show, rent, sell, negotiate, or deal (if asked by seller or buyer to discriminate, the broker should cancel agency)
 - Offer different terms

351

Federal Fair Housing Act/ Civil Rights Act of 1968: Prohibitions

- Advertise in a discriminatory fashion, including ads in newspapers, social media, and other online sites
- May not advertise against any protected class
- Unacceptable example: "no children" or "no Caucasians"
- Acceptable example: "no smoking"
- Advertise the property, not who should occupy it

352

Advertising

- All advertising must comply with the law; there are no exemptions.
- All media advertising housing, including online blogs and social media, fall under this rule.

353

Advertising

- The phrase "female roommate wanted" is acceptable even if the advertisement does not indicate whether the requirements for the shared living exception have been met. If the housing being advertised is a separate dwelling unit without shared living spaces, an ad for a female or male roommate could result in liability. Using words describing the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (e.g., white family home, no Irish) will create liability.

354

Advertising

- Advertisements that are neutral (desirable neighborhoods) will not create liability.
- Advertisements containing descriptions of properties that do not state a preference for persons likely to make use of those facilities are not violations of the law (e.g., an apartment complex with chapel or kosher meals available).

355

Advertising

- Advertisements should not contain an explicit preference, limitation, or discrimination on account of religion (e.g., no Jews, Christian home), and cannot contain a religious reference or symbol, such as a cross, which may indicate a religious preference and violate the law.
- The use of secularized terms or symbols relating to religious holidays such as Santa Claus, the Easter bunny, or St. Valentine's Day, or phrases such as "Merry Christmas," does not constitute a violation of the law.

356

Advertising

- Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap (e.g., no wheelchairs). However, advertisements containing descriptions of properties (e.g., jogging trails, within close proximity of a bus stop) do not violate the law.

357

 Question

A real estate team wants to add "Merry Christmas" to an advertisement. They should

- A. not do so.
- B. do so as it will add merriment to the ad.
- C. consider the religious diversity in the community before placing the ad.
- D. talk to their broker about it.

358

 Answer

D. talk to their broker about it.

- First, the real estate team should consider religious diversity to determine if adding that would be more beneficial than detrimental. If team members would like to proceed, they should then discuss it with their broker before placing the ad.

359

 Americans with Disabilities Act (ADA)

- ADA is intended to ensure equal access to public accommodations for disabled persons.
- A public accommodation is any private entity with facilities open to the public, such as a real estate office.
- ADA requires the removal of architectural and communication barriers and the provision of auxiliary aids and services, if "**readily achievable**."

360

Americans with Disabilities Act (ADA)

- New commercial construction must be accessible to the disabled.
- Disabled residential tenants may make modifications at their expense. They must return the unit to its original condition, at the landlord's request when the lease is over. Additional security deposits to guarantee the return to its original condition are not allowed.

361

Question

A disabled tenant wishes to rent a residential unit. Which of the following will dictate the allowable security deposit?

- A. Federal law
- B. State law
- C. Follow either law
- D. Follow the strictest law

362

Answer

D. Follow the strictest law

- By following the most stringent of the laws, you are then within the acceptable parameters of both.

363

Proactive compliance

- Local planning departments do not guarantee federal ADA compliance when they approve plans. It is incumbent upon the owner/purchaser to rely upon advice from independent experts in ADA compliance, not the local planning department.

364

Sherman Antitrust Act and Clayton Act

- Price-fixing with other firms or associations violates the federal Sherman Antitrust Act.
- Brokers may not discuss commissions with any brokers outside of their firm.
- Real estate firms or brokers may not work together to boycott another company or business.

365

Sherman Antitrust Act

- Non-associated brokerage firms may not work together to assign or split up territories or assign company listings based on price range.
- Commissions are generally not set by law and are negotiable between the broker and the client.
- Recent settlements in national lawsuits charging the real estate industry with price-fixing in opposition to the Sherman Antitrust Act are likely to change how the industry handles commissions in residential transactions.

366

Question

How does the Sherman Antitrust Act impact real estate brokers and agents?

- A. It mandates a minimum commission rate for real estate transactions.
- B. It requires agents to disclose all property information to potential buyers.
- C. It prohibits price-fixing agreements among agents and brokers.
- D. It ensures that all real estate professionals have equal access to listings.

367

Answer

C. It prohibits price-fixing agreements among agents and brokers.

368

National Do Not Call Registry

- The Federal Communications Commission established a National Do Not Call Registry to protect consumers from unwanted commercial solicitations.
- Individuals can register landline and cell phone telephone numbers.
- Solicitors must obtain these opt-out numbers before calling



369

National Do Not Call Registry

- In addition to the national maintained registry, individual companies may maintain their internal do-not-call list.
- As of October 2023, penalties can be up to \$50,120 for each unsolicited call and this number adjusts annually.

370

Question

A real estate agent wants to use cold calling as their primary means of prospecting. Which statement is true?

- A. Do not call rules forbid this.
- B. Cold calling is allowed until a prospect asks you to stop calling them.
- C. This is economically not feasible.
- D. One must acquire the list of opt-out phone numbers and scrub their phone list before making calls.

371

Answer

D. One must acquire the list of opt-out phone numbers and scrub their phone list before making calls.

- These lists can be acquired from the Federal Trade Commission (FTC) and must be kept up to date to avoid the risk of fines.

372

National Do Not Call Registry

- **Exceptions** for when unsolicited calls can be made are as follows:
 - Existing business relationships (within 18 months)
 - If the call is made within three months of an inquiry
 - Where you have written permission to call
 - Commercial numbers
 - Calls can be made to conduct surveys, but no solicitation can be included in the call

373

Can-Spam

- CAN-SPAM is a federal law that stands for Controlling the Assault of Non-Solicited Pornography and Marketing. It is intended to protect consumers from unsolicited emails by requiring
 - opt-out provisions where the recipient can indicate that no additional emails are to be sent to them; that the email has a functioning return address and a legitimate physical address of the maker; and the subject line indicates that it is an advertisement.

374

Can-Spam

- As of October 2023, penalties can be up to \$50,120 for each unsolicited call and this number adjusts annually.



375

Internet advertising

- State laws vary regarding internet advertising. Common items to be aware of include the following:
 - Inclusion of broker name and address in electronic communication
 - Disclosure of license status
 - Ads must be true and correct and not misleading

376

Trust account

- A real estate brokerage firm typically must hold other people's money in a trust account.
- Agents must be able to report the status of all funds received from or on behalf of the principal, such as earnest money, security deposits, and rent. Most license laws require monies to be deposited into trust account immediately or within a specified time. **Commingling** is mixing client monies with personal or general business funds and is always illegal. **Conversion** is the illegal use of such entrusted money (theft).
- Trust accounts are in some places referred to as escrow accounts.

377

Question

- A real estate agent accidentally allows client trust funds to be used for general business purposes. Which statement is true?
- A. This is conversion.
 - B. This is allowable, as long as the agent refunds the money when the mistake is recognized and everyone is informed.
 - C. This is allowable, as long as the agent refund the money as soon as the mistake is found.
 - D. This is commingling.

378

Answer

- A. This is conversion.
- Intent does not matter. Using trust funds for oneself is not legal.

379

Broker due diligence

- State laws will dictate the extent to the due diligence owed by brokers.
- Typically, brokers are required to verify that all marketing material is correct and that all required disclosures have been properly given.

380

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384

Real property



385

Real property

- What is real property?
- Real property refers to land, items affixed to the land, and ownership rights.

386

Transfer of real property

A deed is a conveyance instrument used during the grantor's lifetime to transfer real property. It transfers a bundle of rights.



387

Requirements of a valid deed

- Grantor must have legal competency to execute the deed
- Grantee named with reasonable certainty so as to be identified
- Statement of Consideration
- Granting Clause
- Accurate legal description of the property being conveyed
- Signature of the grantor
- Delivery of the deed during the grantor's lifetime
- Acceptance by the grantee

388

Transfer of real property

- A deed is a document by which an owner of real estate conveys the right, title, or interest owned in the parcel to another.
- The Statute of Frauds in all states requires that all deeds be in writing.
- The owner who is conveying the property is called the **grantor**, and the person who receives the property is called the **grantee**.

389

Personal property



390

Personal property

- What is **personal property**?
- Personal property is movable property. This type of property is also known as "**chattel**".
- Compare: Personal property (movable property) with real estate (immovable property).

391

Transfer of personal property

The bill of sale is a written agreement to transfer a right to personal property. It may be made with or without warranties. An inventory is typically included.



392

Personal property

- **Emblement** – an emblement is an annual crop (like corn) and is, by law, considered the personal property of the tenant farmer.



393

Personal property

Trade Fixtures are used to run a tenant's business: They are considered personal property. The tenant may remove them before the termination of the lease, provided the property is returned to the owner in the same condition in which it was received. If a tenant moves and does not remove the fixtures, the landlord gains the improvements through accession.



394

Test of real vs personal property



395

Real estate can become chattel and vice versa

- Personal property becomes part of a parcel of real estate through **attachment**. An item of chattel is affixed or annexed to a home and becomes part of the property.
- Real estate becomes personal property through **severance**.

396

Test of a Fixture

Property can change from personal to real and visa versa. It is important for the licensee to always be aware of this. Here is a great memory tool for a fixture which is real property.

- Method of Attachment**
- Adaptation**
- Relationship of parties**
- Intent**
- Agreement (Most Important)**

397

Legal Descriptions

There are three types of legal descriptions:

1. Metes and Bounds
2. Government Survey System
3. Lot, Block, and Tract

398

Legal descriptions

- The three most common methods of legal descriptions are: metes and bounds, rectangular (government) survey, and lot and block (a recorded plat map).
- Legal descriptions do not describe improvements, only the land.
- Improvements and appurtenances are automatically included in land descriptions.

399

Metes and bounds

- Metes: measures in feet, compass degrees
- Bounds: shapes or boundaries
- Monuments: fixed objects that serve as reference points for the surveyor when setting boundaries
- **Begins and ends at point of beginning (POB)**
- It is the only description that uses "starting at or commencing at."
- The description must completely encircle the property.
- Measure in clockwise direction
- Particularly useful for describing an irregularly-shaped parcel

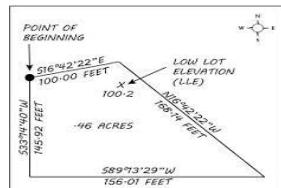
400

Metes and bounds - monuments

- Natural monuments are things created in nature. An example would be as follows: "From the large oak tree to the edge of the riverbed." Since these markers can change over time, the use of artificial monuments (also called benchmarks) are more accurate.
- Benchmarks are permanent reference points throughout the United States. They are usually embossed brass markers set into solid concrete.

401

Example of metes and bounds



402

Government/rectangular survey

- The rectangular (government) survey is a system developed by the United States government that locates a parcel of land within a grid system.
- Meridian and base lines are large imaginary reference lines drawn every six miles. Meridian lines go N/S while base lines go E/W.

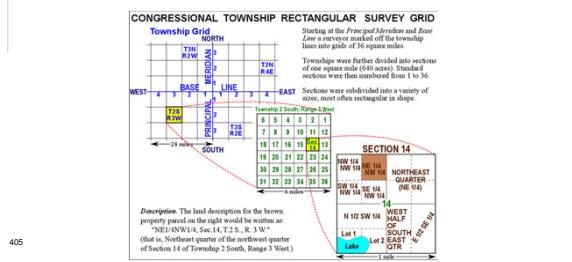
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Government/rectangular survey: Townships and sections

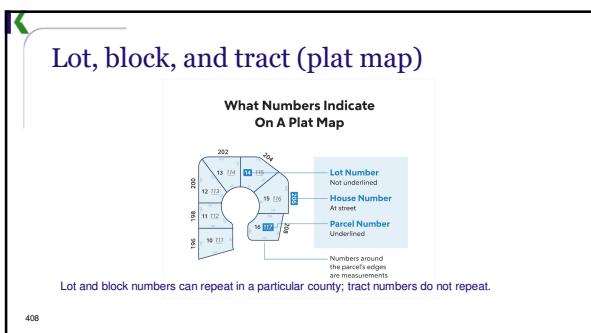
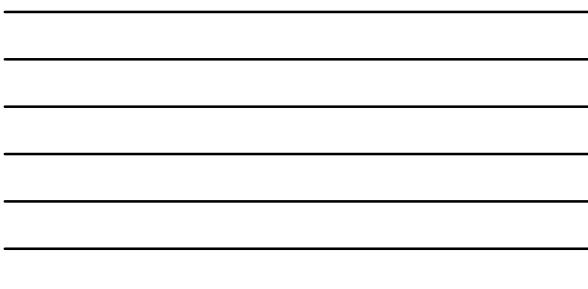
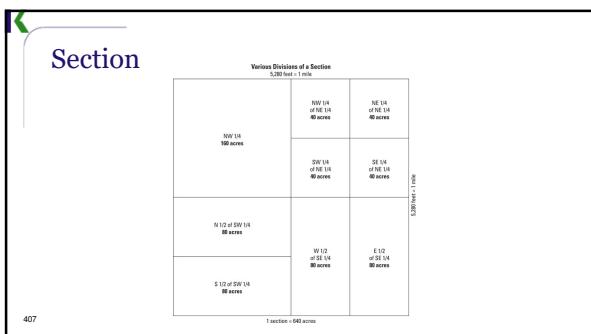
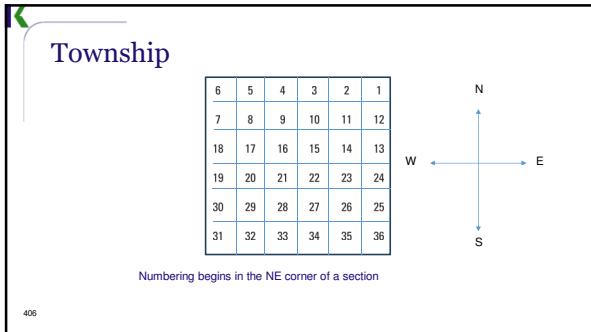
- Townships** are six miles square (six miles on each side) and are delineated by township lines. Townships have an area of 36 square miles, more or less, and are each further divided into 36 sections.
- Sections:** The divisions of a township, *sections*, are one mile square and have an area of one square mile, or 640 acres.

404

Overview of rectangular survey



405



Units of land measurement

- Mile: 5,280 feet (this is a distance)
- Furlong: 660 feet
- *Chain: 66 feet (not often used today)
- *Rod: 16.5 feet (not often used today)
- Square mile: 640 Acres (a square mile is an area of land)
- Acre: 43,560 square feet
- Cubic yard: 27 cubic feet
- Square yard: 9 square feet

409

Encumbrances

- Definition: An encumbrance is a nonpossessory interest in someone else's land. While it does not affect the size of the lot, it might reduce or impair the property owner's rights.



410

General lien

- A lien is a charge or claim that one person has on the personal property or land of another as security of a debt or obligation.
- A **general lien**: A statutory lien that applies to ALL of the real and personal property the individual owns now and in the future.

411

Specific lien

- A **specific lien** attaches to a specified property. A house, for example, could have specific liens such as property tax liens, special assessments, a mortgage, and/or a mechanics lien.



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Voluntary and Involuntary Liens

- A **voluntary lien** is intentionally created by the owner.
 - An owner voluntarily provides a lender a lien for a loan.
- An **involuntary lien** is imposed upon the owner.
 - An involuntary **statutory** lien is created by statute.
 - Mechanic's lien
 - Property tax lien
 - An involuntary **equitable** lien is created by common law.
 - Judgment lien

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Voluntary and Involuntary Liens

- Voluntary
- Involuntary
- Statutory
- Equitable

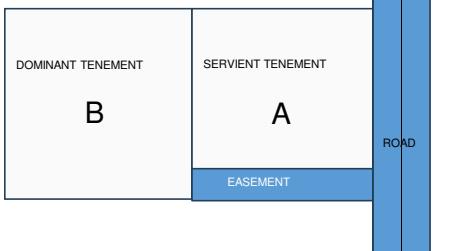
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Easement

- A nonpossessory interest in the land of another.
- An easement is frequently used for ingress (enter) and egress (exit) across someone else's property.
- An appurtenant easement involves two parcels of real estate:
 - The land that is burdened with the easement is called the **servient parcel** (or servient tenement).
 - The land that benefits from the easement is called the **dominant parcel** (or dominant tenement).

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Easement appurtenant example



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Appurtenant Easement

- An appurtenant easement runs with the land. It can be recorded to give constructive notice ("notice to the world").
- The burdened or servient parcel remains the same size. However, the owner can not develop that portion of the property or use it in any way that would interfere with the purpose of the easement.

417



Easement in gross

- An easement in gross has no dominant tenement. **All parties are servient.** Typically, this is used for a utility/service provider company.



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Easement by prescription

- The use must result from adverse, hostile, open, notorious, and continuous use for a statutory period.
- Unlike other easements created through implied or express grant, an easement by prescription may be lost due to nonuse for the prescriptive period.

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Terminating an easement

- The need no longer exists.
- Merger (both sides are now owned by the same person)
- When the owner of the dominant estate releases their interest
- Non-use for a statutory period, as proven in a court of law.

420

License

- A license is a personal privilege to enter the land of another for a specific purpose. A license differs from an easement in that it can be terminated or canceled by the owner of the property at any time.



Example: Extra parking space for a party.

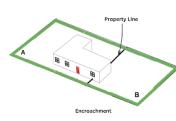
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Encroachment

- An encroachment is an intrusion onto the property belonging to another person.
- This could be something serious like a part of a building, or as simple as a shrub, tree, or other landscaping feature that has grown over a neighbor's **property line**.
- Not every potential encroachment needs to result in a lawsuit. A few encroachments unlikely to have a major impact on insurance needs or resale value include:
 - Fences
 - Gardens
 - Basketball hoops

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Encroachment

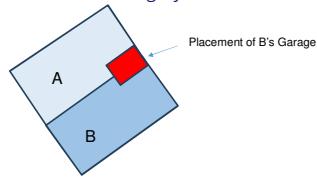


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Major encroachment

- Construction of a garage or part of a neighbor's house on your property would fall into this category.



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Adverse possession



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Adverse possession

- This is an **involuntary transfer** through the courts from one owner to a subsequent owner. An individual claiming the property must satisfy the following elements to succeed in court. The claimant must have treated the property as an owner, by **possessing** the property:
 - Open
 - Continuous
 - Exclusive
 - Actual
 - Notorious

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Adverse possession

- The necessary period of uninterrupted possession is a matter of state law. It can be as short as 5 years to a period of 30 years. Some states require the adverse possessor pay property taxes over their period of occupancy, many don't. Again, this is matter determined by the law of your particular state.
- To claim legal title, the adverse possessor files an action in court to receive undisputed title.

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Bundle of rights



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Rights

- In theory, we own property down to the earth and up into outer space, as far as is imaginable, EXCEPT as limited by law.
- This includes the surface rights, air rights, water rights, and subsurface rights (MOG).
- Rights are considered REAL property and may be sold separately from the land.

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Littoral rights

If the water is **not flowing**, as in the case of a pond, **lake**, or ocean, the abutting owner may have the littoral rights.

*Remember, rights may have been sold before you purchased the property.

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Riparian rights

Rights and obligations that are incidental to ownership of land adjacent to or abutting on moving (flowing) navigable watercourses, such as **rivers**. The word riparian actually means "riverbank."

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Types of ownership

A tenancy in **severalty** is ownership vested in one person alone, rather than held jointly with another.

Sever / alty

A corporation, state, county, or city may hold title in this manner. Individuals may hold title alone, even if married.

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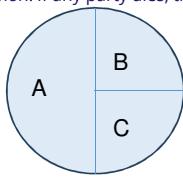
Tenancy in common

- Concurrent ownership occurs when multiple owners simultaneously own one parcel of real property.
- One form of concurrent ownership is called "tenants in common." In this form of concurrent ownership of property, each owner has an undivided interest in the whole property. For example, if one owner has a 50% interest in the real estate, it is 50% of the entire parcel.
- There is no right of survivorship. The owners may have unequal interests and become vested at different times.
- One owner could sell, encumber, lease, give away or will their share without the other owner's consent.

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Tenancy in common

- Tenancy in common: If any party dies, they can will their share to heirs.



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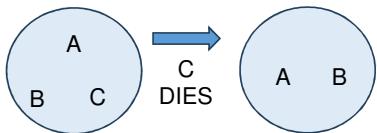
Joint tenancy

- An estate of interest owned by two or more natural persons, all owning equal shares with the right of survivorship. The death of one joint tenant does not destroy the owning unit—it only reduces by one, the number of persons who jointly own the property.
- Upon death, interests go to co-owner(s) without going through probate.
- Overrides a will
- Death certificate and joint tenancy affidavit must be recorded for effective title
- There are four unities for joint tenancy:
 - Time, Title, Interest, and Possession (PITT or TTIP)

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Joint tenancy

- The deed must state that the owners desire to hold tenancy "as Joint Tenants" or in "Joint Tenancy." Each party can sell, lease, encumber, or give away their share without the others' consent. However, a joint tenant cannot will away their share.



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Common interest ownership

- Condominiums
- Cooperatives (co-ops)
- Timeshares

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Declaration for common interest units

- The Declaration of the Covenants, Conditions and Restrictions, or CC&Rs, **contains the ground rules for the operation of the association**. The governing document identifies the association's common area, responsibilities, and percentage of ownership of common areas. It also explains the obligations of the association to collect assessments, as well as the obligation of owners to pay assessments. It includes insurance-related matters and architectural rules.

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Condominium

- A condominium is an estate in real property consisting of an **individual interest in a unit** and an undivided common interest in the common areas of the project. This type of property can be residential, commercial, or industrial.
- Each unit is a statutory entity that may be mortgaged, taxed, sold or otherwise transferred separately and independently of all other units. Each unit can be foreclosed on separately in case of default.
- The unit and common areas are appurtenant and cannot be sold or transferred separately.

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Community Apartment Project

- A community apartment project is one in which the owner has an individual interest in the land and exclusive right of occupancy of an apartment on the land. All owners are tenants in common. The project will receive one tax bill and any loan will be on the entire project and the responsibility of all tenants.

440

Cooperatives

- In a cooperative, a corporation holds title to the land and building. Depending on the state, the corporation may offer shares of stock to prospective tenants. The purchaser in the corporation becomes a stockholder in the corporation by virtue of stock ownership and receives a proprietary lease to the apartment for the life of the corporation. Because stock is personal property, the tenant-owners do not own real estate.

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Cooperatives

- The operation and management of a cooperative is determined by the corporation's bylaws. An important issue in most cooperatives is the method by which shares may be transferred to new owners. The by-laws may require the shareholder to sell back to the corporation. Or, the owner may be allowed to sell to another, if approved by the Board of Directors. The IRS treats ownership of a cooperative as a fee simple estate in regard to deductibility of interest, taxes, and home seller's tax exclusions.

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Cooperatives

- John Lennon and Yoko Ono in front of the famous Cooperative, "The Dakota," in New York City.



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Time shares

A time share interest, typically found in resort properties, permits multiple purchasers to buy a relatively small interest in real estate. Each purchaser receives the right to occupy the facilities for a certain period of time. A time share is subject to statutory laws in each state. In addition, time shares may be subject to federal securities laws.



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Property in a trust

- A trust is a device through which one person (called the "trustor") transfers ownership of property to someone else (called the "trustee") to hold or manage for the benefit of a third party (called the "beneficiary"). Perhaps a grandfather wishes to ensure the college education for his granddaughter. He can transfer an amount sufficient to cover those expenses to a trust account that will be held by his bank, with his daughter as trustee of the account. The granddaughter is the beneficiary. The mother is the trustee. She owes fiduciary duties to her daughter. Through the trust, the trustor can limit or expand the powers of the trustee.

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Contact Information

Questions about the information that was covered today?
Please send your questions to the email address below or
post them in the Community Forum.

nationalleadinstructor@kaplan.com

Thank you for attending today's LEARN session

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